SUBMISSION TO THE

2015 Commission on Legislative, Judicial and Executive Compensation

APPENDIX

Lawrence K. Marks
CHIEF ADMINISTRATIVE JUDGE OF THE STATE OF NEW YORK

2015 Commission on Legislative, Judicial and Executive Compensation

APPENDIX

THIS APPENDIX CONTAINS A COMPILATION OF DATA RELEVANT TO THE DELIBERATIONS of the Commission on Legislative, Judicial and Executive Compensation established by chapter 60 of the Laws of 2015. In charging the Commission with the responsibility to "examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits," the Legislature directed the Commission to take into account certain factors, including the overall economic climate, rates of inflation, changes in public-sector spending, levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise, and the State's ability to fund increases in compensation. This compilation seeks to provide information germane to the listed factors as well as other resources intended to assist the Commission in its task of determining appropriate judicial compensation.

APPENDIX

SUBMISSION TO THE

2015 Commission on Legislative, Judicial and Executive Compensation

APPENDIX A

L. 2015, ch. 60, Part E

(Establishing Commission on Legislative, Judicial and Executive Compensation)

PART E

Section 1. Chapter 567 of the laws of 2010 relating to establishing a special commission on compensation, and providing for their powers and duties; and to provide periodic salary increases to state officers is REPEALED.

§ 2. 1. On the first of June of every fourth year, commencing June 1, 2015, there shall be established a commission on legislative, judicial and executive compensation to examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits for members of the legislature, judges and justices of the state-paid courts of the unified court system, statewide elected officials, and those state officers referred to in section 169 of the executive law.

2. (a) In accordance with the provisions of this section, the commission shall examine: (1) the prevailing adequacy of pay levels and other non-salary benefits received by members of the legislature, statewide elected officials, and those state officers referred to in section 169 of the executive law; and

(2) the prevailing adequacy of pay levels and non-salary benefits received by the judges and justices of the state-paid courts of the unified court system and housing judges of the civil court of the city of New York and determine whether any of such pay levels warrant adjustment; and

(b) The commission shall determine whether: (1) for any of the four years commencing on the first of April of such years, following the year in which the commission is established, the annual salaries for the judges and justices of the state-paid courts of the unified court system and housing judges of the civil court of the city of New York warrant an increase; and

(2) on the first of January after the November general election at which members of the state legislature are elected following the year in which the commission is established, and on the first of January following the next such election, the like annual salaries and allowances of members of the legislature, and salaries of statewide elected officials and state officers referred to in section 169 of the executive law warrant an increase.

3. In discharging its responsibilities under subdivision two of this section, the commission shall take into account all appropriate factors including, but not limited to: the overall economic climate; rates of inflation; changes in public-sector spending; the levels of compensation and non-salary benefits received by executive branch officials and legislators of other states and of the federal government; the levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and the state's ability to fund increases in compensation and non-salary benefits.

§ 3. 1. The commission shall consist of seven members to be appointed as follows: three shall be appointed by the governor; one shall be appointed by the temporary president of the senate; one shall be appointed by the speaker of the assembly; and two shall be appointed by the chief judge of the state, one of whom shall serve as chair of the commission. With regard to any matters regarding legislative or executive compensation, the chair shall preside but not vote. Vacancies in the commission shall be filled in the same manner as original appointments. To the extent practicable, members of the commission shall have

experience in one or more of the following: determination of executive compensation, human resource administration or financial management.

2. The commission shall only meet within the state, may hold public hearings, at least one of which shall be open for the public to provide comments and shall have all the powers of a legislative committee pursuant to the legislative law. It shall be governed by articles 6, 6-A and 7 of the public officers law.

3. The members of the commission shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties hereunder.

4. No member of the commission shall be disqualified from holding any other public office or employment, nor shall he or she forfeit any such office or employment by reason of his or her appointment pursuant to this section, notwithstanding the provisions of any general, special or local law, regulation, ordinance or city charter.

5. To the maximum extent feasible, the commission shall be entitled to request and receive and shall utilize and be provided with such facilities, resources and data of any court, department, division, board, bureau, commission, agency or public authority of the state or any political subdivision thereof as it may reasonably request to carry out properly its powers and duties pursuant to this section.

6. The commission may request, and shall receive, reasonable assistance from state agency personnel as necessary for the performance of its function.

7. The commission shall make a report to the governor, the legislature and the chief judge of the state of its findings, conclusions, determinations and recommendations, if any, not later than the thirty-first of December of the year in which the commission is established for judicial compensation and the fifteenth of November the following year for legislative and executive compensation. Any findings, conclusions, determinations and recommendations in the report must be adopted by a majority vote of the commission and findings, conclusions, determinations and recommendations with respect to executive and legislative compensation shall also be supported by at least one member appointed by each appointing authority. Each recommendation made to implement a determination pursuant to section two of this act shall have the force of law, and shall supersede, where appropriate, inconsistent provisions of article 7-B of the judiciary law, section 169 of the executive law, and sections 5 and 5-a of the legislative law, unless modified or abrogated by statute prior to April first of the year as to which such determination applies to judicial compensation and January first of the year as to which such determination applies to legislative and executive compensation.

8. Upon the making of its report as provided in subdivision seven of this section, each commission established pursuant to this section shall be deemed dissolved.

§ 4. Date of entitlement to salary increase. Notwithstanding the provisions of this act or of any other law, each increase in salary or compensation of any officer or employee provided by this act shall be added to the salary or compensation of such officer or employee at the beginning of that payroll period the first day of which is nearest to the effective date of such increase as provided in this act, or at the beginning of the earlier of two payroll periods the first days of which are nearest but equally near to the effective date of such increase as provided in this act; provided, however, the payment of such salary increase pursuant to this section on a date prior thereto instead of on

such effective date, shall not operate to confer any additional salary rights or benefits on such officer or employee. The annual salaries as prescribed pursuant to this act whenever adjusted pursuant to the provisions of this act, shall be rounded up to the nearest multiple of one hundred dollars.

§ 5. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after April 1, 2015.

PART F

Section 1. This act shall be known and may be cited as the "Infrastructure investment act".

§ 2. For the purposes of this act:

(a) "authorized state entity" shall mean the New York state thruway authority, the department of transportation, the office of parks, recreation and historic preservation, the department of environmental conservation and the New York state bridge authority.

(b) "best value" shall mean the basis for awarding contracts for services to the offerer that optimize quality, cost and efficiency, price and performance criteria, which may include, but is not limited to:

1. The quality of the contractor's performance on previous projects;

2. The timeliness of the contractor's performance on previous projects;

3. The level of customer satisfaction with the contractor's performance on previous projects;

4. The contractor's record of performing previous projects on budget and ability to minimize cost overruns;

5. The contractor's ability to limit change orders;

6. The contractor's ability to prepare appropriate project plans;

7. The contractor's technical capacities;

8. The individual qualifications of the contractor's key personnel;

9. The contractor's ability to assess and manage risk and minimize risk impact; and

10. The contractor's past record of compliance with article 15-A of the executive law.

Such basis shall reflect, wherever possible, objective and quantifiable analysis.

(c) "capital project" shall have the same meaning as such term is defined by subdivision 2-a of section 2 of the state finance law.

(d) "cost plus" shall mean compensating a contractor for the cost to complete a contract by reimbursing actual costs for labor, equipment and materials plus an additional amount for overhead and profit.

(e) "design-build contract" shall mean a contract for the design and construction of a capital project with a single entity, which may be a team comprised of separate entities.

(f) "procurement record" means documentation of the decisions made and the approach taken in the procurement process.

§ 3. Notwithstanding the provisions of section 38 of the highway law, section 136-a of the state finance law, section 359 of the public authorities law, section 7210 of the education law, and the provisions of any other law to the contrary, and in conformity with the requirements of this act, an authorized state entity may utilize the alternative delivery method referred to as design-build contracts, in consultation with relevant local labor organizations and construction industry, for capital projects related to the state's physical infrastructure,

SUBMISSION TO THE

2015 Commission on Legislative, Judicial and Executive Compensation

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APPENDIX B

Final Report of the
Special Commission on Judicial Compensation

(August 29, 2011)

FINAL REPORT

OF THE

SPECIAL COMMISSION

ON JUDICIAL

COMPENSATION

AUGUST 29, 2011

SPECIAL COMMISSION ON JUDICIAL COMPENSATION

P.O. BOX 7342 - ALBANY, NEW YORK 12224

August 29, 2011

The Honorable Andrew M. Cuomo
Governor of the State of New York
State Capital
Albany, New York 12224

The Honorable Dean Skelos
President Pro Tempore of the New York State Senate
Legislative Office Building, Room 909
Albany, New York 12247

The Honorable Sheldon Silver
Speaker of the New York State Assembly
Legislative Office Building, Room 932
Albany, New York 12248

The Honorable Jonathan Lippman
Chief Judge of the State of New York
20 Eagle Street
Albany, New York 12207

Dear Governor Cuomo, Temporary President Skelos, Speaker Silver and Judge Lippman:

I am pleased to submit this report on behalf of the Special Commission on Judicial Compensation (the "Commission"). This report outlines the Commission's recommendations with respect to setting compensation for judges and justices of the State-paid courts of the Unified Court System.

The Commission has considered various factors in setting what we believe are appropriate judicial compensation levels in light of the State's current fiscal situation. The Commission received and considered many comments and letters, many of which are attached to and referenced in this report. All of the comments and submissions that have been received by the Commission may be found on the Commission's website: www.judicialcompensation.ny.gov.

I believe the Commission has come to a reasoned and fair result to address the inequity that currently exists in judicial pay for the next four years. I would also like to highlight that judicial salary levels will be reviewed again in 2015 by another statutorily-created Commission.

I would like to commend the members of the Commission for their hard work, ideas, thoughtful discussion, and partnership while undertaking this important task. I am honored to have had the opportunity to work with each member of this Commission.

Respectfully submitted,

William C. Thompson, Jr.
Chair

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Members of the Special Commission on Judicial Compensation

William C. Thompson, Jr. is the Chair of the Judicial Compensation Commission. Currently, Mr. Thompson is the Chief Administrative Officer/Senior Managing Director at Siebert Brandford Shank & Co. In addition, he is the Chair of the Battery Park City Authority. From 2002 to 2009, Mr. Thompson served as Comptroller of New York City. Before being elected to public office, he was appointed to be Brooklyn's representative to the New York City Board of Education, where he later became President for five terms. In 1993, he was the Senior Vice President at an investment firm. From 1983-1992, Mr. Thompson was the Deputy Borough President of Brooklyn. He is a graduate of New York City Public Schools and Tufts University.

Richard Cotton is the Executive Vice President and General Counsel of NBC-Universal and Chairman of the U.S. Chamber of Commerce Coalition against Counterfeiting and Piracy. Mr. Cotton has been at NBC for more than 20 years, serving as General Counsel except for his service as president and Managing Director of CNBC Europe from 2000 to 2004. Prior to NBC, during the 1980's, he practiced law in Washington, DC, and then served as the President and CEO of HCX, Inc., a Washington-based management company. During the late 1970's, Mr. Cotton held several high-level positions in the U.S. Departments of Health, Education, and Welfare and Energy. In the early 1970's, he served as law clerk to Judge J. Skelly Wright on the US Court of Appeals for the DC Circuit and then to Justice William J. Brennan, Jr. on the US Supreme Court.

William Mulrow is a Senior Managing Director at Blackstone. He has also been Chairman of Sterling Suffolk Racecourse LLC since August 2007. He was a Director of the Federal Home Loan Bank in New York City, the Municipal Assistance Corporation and the United Nations Development Corporation. In addition, Mr. Mulrow has served on the Boards of several academic institutions including the State and Local Government Center at the Kennedy School of Government at Harvard University, the Maxwell School for Public Affairs at Syracuse University and the Fordham Preparatory School in the Bronx. Mr. Mulrow earned his BA from Yale University and his MPA from Harvard University's John F. Kennedy School of Government.

James Tallon, Jr. is President of the United Hospital Fund of New York. Prior to joining the Fund in 1993, he represented Binghamton and parts of Broome County in the New York State Assembly for nineteen years. Mr. Tallon is currently chair of The Commonwealth Fund, and he chairs the Kaiser Commission on Medicaid and the Uninsured. Mr. Tallon serves as Secretary/Treasurer of the Alliance for Health Reform and also serves on the boards of the Institute on Medicine as a Profession and the New York eHealth Collaborative. In addition, Mr. Tallon is a member of the advisory board for the Jonas Center for Nursing Excellence and the New York State Board of Regents. He headed the Health Care Policy Advisory Committee during the transition period in 2006 and led the 1998-99 planning process which established the National Quality Forum. Mr. Tallon is a former member of the boards of the Joint Commission on Accreditation of Healthcare Organizations and the Center for Health Policy Development.

****Robert B. Fiske, Jr.** is Senior Counsel at Davis Polk & Wardwell LLP, the firm he joined upon graduation from law school. He graduated from Yale University in 1952 and the University of Michigan Law School in 1955. Mr. Fiske was an Assistant United States Attorney in the Southern District of New York from 1957 to 1961. He was appointed United States Attorney for the Southern District of New York by President Gerald Ford in 1976 and served in that position until 1980. While United States Attorney, he served as Chairman of the Attorney General's Advisory Committee of the United States Attorneys. He also served as Independent Counsel in the Whitewater investigation from January to October 1994. He has served as Chairman of a Judicial Commission on Drugs and the Courts appointed by former New York State Chief Judge Judith S. Kaye and as a member of the Commission for the Review of FBI Security Programs (Webster Commission). Mr. Fiske is a past President of the American College of Trial Lawyers and of the Federal Bar Council. He has served as Chairman of the Standing Committee on Federal Judiciary of the American Bar Association and as Chairman of the Planning and Program Committee of the Second Circuit Judicial Conference.

****Kathryn S. Wylde** is President and CEO of the nonprofit Partnership for New York City. She joined the Partnership in 1982, serving as President and CEO of both the New York City Investment Fund and the Housing Partnership Development Corporation. Ms. Wylde is also the Deputy Chair of the Board of the Federal Reserve Bank of New York, and serves on a number of boards and advisory groups, including the Mayor's Sustainability Advisory Board, NYC Economic Development Corporation, NYC Leadership Academy, the Research Alliance for NYC Public Schools, the Manhattan Institute, the Lutheran Medical Center, the Sila Calderon Foundation and the Independent Judicial Election Qualification Commission for the First Judicial District.

****Mark S. Mulholland** is Managing Partner at Ruskin Moscou Faltischek and a senior member of the firm's Litigation Department. Prior to joining the firm in 1991, Mr. Mulholland was at Willkie Farr & Gallagher in their commercial litigation department. He also served as a Captain in the U.S. Army Judge Advocate General's Corps and was the Senior Defense Counsel at the National Training Center at Ft. Irwin, California. In addition, he has served as Special Assistant to the U.S. Attorney for the Central District of California. Mr. Mulholland was elected as a Board Member of Brookhaven Memorial Hospital Medical Center in 2008. He served as a Trustee and Vice President of the Board of Education in his home village in the Town of Babylon, was selected to serve as a Board Member of the Long Island Aquarium and was appointed a Public Member of the New York Mercantile Exchange Adjudication Committee. He is a member of the New York State Bar Association, the Nassau County Bar Association and the Suffolk County Bar Association. Mr. Mulholland is a frequent contributor to the *New York Law Journal* and serves as a Mediator in the Eastern District of New York's Federal Court Mediation Program. Mr. Mulholland earned his BA, cum laude, from the University of Notre Dame and his JD, cum laude, from the State University of New York at Buffalo.

**** Denotes members of the Commission that opposed the final recommendations of the Commission and did not join in this report. Each dissenting member has submitted dissenting statements, which are attached to this report as Part Two.**

PART ONE
FINAL REPORT OF THE COMMISSION

I. Introduction

A diverse and thriving judiciary is central to every aspect of society. New York State is home to some of the most celebrated jurists and we must ensure that it continues to attract top talent to the bench. One way to ensure this is by adequately paying our judges. However, for several years, the State has failed to increase judicial pay and as a result, the State has started to lose some of its judicial talent. At the same time, the economy is faltering and the State is facing an unprecedented budget crisis, both of which have affected every citizen of the State. Therefore, the mandate of this Commission must be to balance these facts, objectively review current judicial salaries and bring them to a level that is fair and reasonable in light of the current economic climate.

II. Statutory Mandate

Chapter 567 of the Laws of 2010 created the Special Commission on Judicial Compensation ("Commission") to "examine, evaluate and make recommendations with respect to adequate levels of compensation and non-salary benefits for judges and justices of the state-paid courts of the unified court system."[1] The Commission consists of seven members: three members are appointed by the Governor, including the Chair; two members are appointed by the Chief Judge of the Court of Appeals; one member is appointed by the Temporary President of the Senate; and one member is appointed by the Speaker of the Assembly.

[1] *See* Chapter 567 of the Laws of 2010. (Appendix A).

The Commission must make its final, binding recommendations to the Governor, Legislature and Chief Judge of the State within 150 days of establishment.[2] After issuing its final report, the Commission will dissolve. However, a new commission will be established every four years to review and make recommendations with respect to State judicial compensation.

Pursuant to its statutory authority, the Commission must take a variety of factors into consideration in making its final recommendations, including, but not limited to:

- The overall economic climate;
- Rates of inflation;
- Changes in public-sector spending;
- The levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and
- The State's ability to fund increases in compensation and non-salary benefits.

III. Findings & Recommendations of the Commission

In furtherance of its statutory mission, the Commission held meetings in New York City on July 11, August 8, and August 26, 2011 and a public hearing in Albany on July 20, 2011. The Commission received a number of written submissions, comments and testimony, which, in addition to the Commission members' independent research and thought, provided information relevant to the required statutory considerations and greatly informed these final

[2] The recommendations are deemed binding unless superseded by legislative action.

recommendations. The following sets forth the findings of the Commission with regard to setting judicial compensation levels for New York State and reflects the final vote of the Commission held on August 26, 2011.

a. *Most Recent Judicial Salary Increase*

The State became responsible for paying all judicial salaries pursuant to the Unified Court Budget Act, enacted in 1977.[3] Since 1977, the State has increased judicial salaries only six times, with the last increase taking effect in 1999.[4]

In 1997, prior to the most recent judicial salary increase, then-Chief Judge Judith Kaye established a special Commission to review the Compensation of New York State Judges. In 1999, the New York State Legislature enacted the recommendations of that judicial commission, with the salaries of State Supreme Court justices set to the United States District Court level of $136,700.[5] However, while District Court Judges have received several raises since 1999, and are currently paid an annual salary of $174,000, judges in New York State have received no salary increase since 1999. Current judicial salary levels for the Court of Appeals, Intermediate Appellate Courts, Court of Claims, Supreme Court and various countywide and citywide courts are set forth below:[6]

[3] *See* Chapter 966 of the Laws of 1976.
[4] A comprehensive history of judicial salary adjustments since 1977 may be found in the Office of Court Administration's "Submission to the 2011 Commission on Judicial Compensation," (the "OCA Submission"), Supplemental Appendix at 23-43. (Appendix C).
[5] *See* Chapter 630 of the Laws of 1998.
[6] *See* N.Y. Judiciary Law Article 7-B. Salaries for judges in countywide & citywide courts vary by jurisdiction. A comprehensive listing of those salaries may be found in the OCA Submission, Supplemental Appendix at 12-21. (Appendix C).

Statewide Courts	Salary
Court of Appeals	
Chief Judge:	$156,000
Associate Judge:	$151,200
Appellate Division	
Presiding Justice:	$142,700
Associate Justice:	$139,700
Appellate Term	
Presiding Justice:	$142,700
Associate Justice:	$139,700
Supreme Court	
Justice:	$136,700
Court of Claims	
Presiding Judge:	$144,000
Judge:	$136,700
Countywide and Citywide Courts	
Judge (various):	$27,200 - $136,700

b. *Salary Comparisons*

The Commission has considered the salary levels of other New York State officials and employees as well as judicial salaries in other states.[7] For example, annual salaries of other top New York State officials are as follows: the Governor ($179,000); the Attorney General ($151,500);[8] State Comptroller ($151,500);[9] Members of the Legislature ($79,500 plus a per diem);[10] and Executive Commissioners (maximum of $136,000).[11]

[7] A salary list of various New York State employees can be found in the Coalition of New York State Judicial Associations' "Presentation to the New York State Judicial Compensation Commission," June 10, 2011 (the "Coalition Submission") at 102-115. A salary list of salaries of New York City lawyers in private practice and physicians can be found in the Coalition Submission, at 133-137. (Appendix D).
[8] *See* N.Y. Exec. Law Section 60.
[9] *See* N.Y. Exec. Law Section 40.
[10] *See* N.Y. Exec. Law Section 5. Note that members of the Legislature work on a part-time basis.
[11] *See* N.Y. Exec. Law Section 169.

Annual salaries of the judges at the trial court level in the northeast are as follows: New Jersey ($165,000); Pennsylvania ($164,602); Connecticut ($146,780); and Massachusetts ($129,624).[12] The current annual salary of a U.S. District Court judge is $174,000.

c. *Other Factors*

Many of the submissions received by the Commission detail the economic harm that has befallen New York's judges as a result of the stagnated pay and highlighted the State's need for a fairly compensated judiciary.[13] For example, as a result of the lack of salary increases for the past twelve years, pay for New York's Supreme Court justices currently ranks twenty-first in the nation and last in the nation when salary is adjusted for cost of living.[14] Cost of living, as determined by the Consumer Price Index – Northeast Urban Region ("CPI-U")[15] has increased by approximately 41 percent since 1999.[16] Over the same period, caseloads for State judges have also steadily increased.[17]

However, notwithstanding the above, the Commission must also be mindful of the current economic climate of the State. The State has and will continue to face multi-billion dollar budget gaps, with a projected deficit of $2.5 billion next year.[18] In determining an appropriate judicial salary increase, the Commission must take into account how that increase will affect the State's financial situation.

[12] *See* OCA Submission, Supplemental Appendix at 64-66. (Appendix C).
[13] *See* Commission website for all submissions received: www.judicialcompensation.ny.gov.
[14] *See* OCA Submission at 16. (Appendix B).
[15] U.S. Department of Labor, Bureau of Labor Statistics.
[16] *See* OCA Submission at 13. (Appendix B).
[17] *See* Coalition Submission at 16. (Appendix D).
[18] See Testimony of Robert Megna, Director of the Division of the Budget, July 20, 2011 (the "Budget Submission"), at 2-3. (Appendix E).

It is also important to note that the Commission's enacting statute provides for review of judicial salaries every four years, ensuring that judicial salaries will be reevaluated for adequacy on a regular basis going forward.

d. *Recommendations*

The Commission has determined that the appropriate benchmark at this time for the New York State judiciary is the compensation level of the Federal judiciary. The Commission recognizes the importance of the New York State judiciary as a co-equal branch of government and recognizes the importance of establishing pay levels that make clear that the judiciary is valued and respected. The Federal judiciary sets a benchmark of both quality and compensation – New York State should seek to place its judiciary on par. That is where New York State judicial compensation was in the late 1990's and our recommendation is to re-establish this benchmark with a phase-in period that takes account of the State's current financial challenges.

For the foregoing reasons, the Commission has determined that all New York State judges shall receive phased-in salary increases over the next three fiscal years, starting on April 1, 2012, with no increase in fiscal year 2015-16. State Supreme Court Justices will achieve parity with current Federal District Court judge salaries by the third fiscal year and will be paid an annual salary of $160,000 in fiscal year 2012-13, $167,000 in 2013-14 and $174,000 in 2014-15. All other judges will receive proportional salary increases. Increases for each judicial salary level in each fiscal year will be as follows:[19]

[19] Salary chart prepared by the Office of Court Administration.

Court	April 1, 2012	April 1, 2013	April 1, 2014
Court of Appeals			
Chief Judge:	$182,600	$190,600	$198,600
Associate Judge:	$177,000	$184,800	$192,500
Appellate Division			
Presiding Justice:	$172,800	$180,400	$187,900
Associate Justice:	$168,600	$176,000	$183,300
Appellate Term			
Presiding Justice:	$167,100	$174,400	$181,700
Associate Justice:	$163,600	$170,700	$177,900
Administrative Judges			
Dep. CAJ (NYC):	$168,600	$176,000	$183,300
Dep. CAJ (outside NYC):	$168,600	$176,000	$183,300
AJ (in NYC; Jud. Dist.; county):	$165,700	$172,900	$180,200
Supreme Court			
Justice:	$160,000	$167,000	$174,000
Court of Claims			
Presiding Judge:	$168,600	$176,000	$183,300
Judge:	$160,000	$167,000	$174,000
County Court			
Earning $136,700 on 3/31/12:	$160,000	$167,000	$174,000
Earning $131,400 on 3/31/12:	$153,800	$160,600	$167,300
Earning $127,000 on 3/31/12:	$148,700	$155,200	$161,700
Earning $125,600 on 3/31/12:	$147,100	$153,500	$159,900
Earning $122,700 on 3/31/12:	$143,700	$149,900	$156,200
Earning $121,200 on 3/31/12:	$141,900	$148,100	$154,300
Earning $119,800 on 3/31/12:	$140,300	$146,400	$152,500
Family Court			
Earning $136,700 on 3/31/12:	$160,000	$167,000	$174,000
Earning $127,000 on 3/31/12:	$148,700	$155,200	$161,700
Earning $125,600 on 3/31/12:	$147,100	$153,500	$159,900
Earning $119,800 on 3/31/12:	$140,300	$146,400	$152,500
Surrogate's Court			
Earning $136,700 on 3/31/12:	$160,000	$167,000	$174,000
Earning $135,800 on 3/31/12:	$159,000	$166,000	$172,900
Earning $129,900 on 3/31/12:	$152,100	$158,700	$165,400
Earning $125,600 on 3/31/12:	$147,100	$153,500	$159,900
Earning $121,200 on 3/31/12:	$141,900	$148,100	$154,300
Earning $119,800 on 3/31/12:	$140,300	$146,400	$152,500
Civil Court of NYC and Criminal Court of NYC			
Judge of the Civil Court:	$147,100	$153,500	$159,900
Housing Judge of the Civil Court:	$135,100	$141,000	$146,900
Judge of the Criminal Court:	$147,100	$153,500	$159,900

District Court			
Pres., Bd. Of Judges (Nassau):	$148,600	$155,100	$161,600
Judge (Nassau):	$143,700	$149,900	$156,200
Pres., Bd. Of Judges (Suffolk):	$148,600	$155,100	$161,600
Judge (Suffolk):	$143,700	$149,900	$156,200
City Courts outside NYC			
Earning $119,500 on 3/31/12:	$139,900	$146,000	$152,200
Earning $118,300 on 3/31/12:	$138,500	$144,600	$150,600
Earning $116,800 on 3/31/12:	$136,800	$142,700	$148,700
Earning $115,100 on 3/31/12:	$134,800	$140,700	$146,600
Earning $113,900 on 3/31/12:	$133,400	$139,200	$145,000
Earning $108,800 on 3/31/12:	$127,400	$133,000	$138,500
Earning $81,600 on 3/31/12:	$95,600	$99,700	$103,900
Earning $54,400 on 3/31/12:	$63,700	$66,500	$69,300
Earning $27,200 on 3/31/12:	$31,900	$33,300	$34,700

PART TWO

DISSENTING STATEMENTS

I. Dissenting Statement of Robert B. Fiske, Jr.

Taking all of the statutory factors into account, I have said that the sensible and fair solution would be to increase salaries, as of April 1, 2012 to $195,754 – the level that judges would be at if they had received a cost-of-living increase every year since 1999 – with annual cost-of-living increases over the next three years. Mindful of the Legislature's instruction to consider rates of inflation and the state's economic condition, an increase to $195,754 would do no more than restore to judges the purchasing power that they had in 1999. It would not compensate for the $330,000 that a judge on the bench since 1999 has lost as a result of the salary freeze, it would not amount to any sort of a raise, as that term is commonly understood, and it would still leave New York in the bottom half of all states in judicial compensation when adjusted for cost-of-living.

Nonetheless, I cannot say that the views of the majority of the Commission that the state judges should be restored to parity with the federal judges are unreasonable. I could accept parity with federal judges, but not the phase-in proposed by the majority. The phase-in only compounds the financial injury that state judges have experienced over the last twelve years, and particularly hurts judges approaching retirement, most of whom have served on the bench for the entire length of the salary freeze. And I concur with the statement of Commissioner Kathryn Wylde concerning the symbolic importance of an immediate increase to the federal level.

No discussion of the state's ability to fund increased judicial compensation can be complete without noting what the state has saved by failing to adjust judicial salaries for twelve

years. Since 1999, by not giving judges appropriate cost-of-living increases, the state has saved approximately $515 million to spend in other areas. Increasing judicial salaries to $195,754 would cost a fraction of that amount – $75 million (less than 15%) – and immediately restoring parity with federal judges would cost even less. I also believe that judges should have received a cost-of-living increase in 2015 to ensure that judicial salaries maintain their spending power.

New York's judges have been underpaid for more than a decade. While salaries have remained stagnant, caseloads have climbed, leading to a significant increase in the number of judges leaving the bench. I regret that the Commission's recommendation does not go far enough in compensating the state's judiciary or in remedying a constitutional violation twelve years in the making.

II. Dissenting Statement of Kathryn S. Wylde

The report of the Judicial Compensation Commission presents a reasonable and fair recommendation for judicial salary increases, taking account of the difficult fiscal and economic conditions facing New York State. The decision to bring state judges into parity with their federal counterparts over three years, however, does not provide the immediate redress that New York's judiciary hoped for and, I believe, deserve. For twelve years, judicial salaries were held hostage to tangential considerations, exposing judicial leadership to public humiliation and diminishing their status. Ultimately, the judiciary was forced to sue the state in order to enforce its constitutional position as an independent, co-equal branch of government. In public testimony, letters and reports, the judiciary made clear to the Commission that the long struggle for fair compensation was not just about money, but equally about the extent to which the judiciary is valued and respected by the citizens of New York State. I voted no on the recommendation of the Commission because I believe that immediate action to restore state judges to the compensation level of their federal counterparts would have made a more powerful statement about the critical importance to the state of a strong, highly qualified and independent judiciary.

III. Dissenting Statement of Mark S. Mulholland

New York's trial judges should be paid $192,000 annually. While I of course welcome any reasonable salary increase for New York's judiciary, I oppose the Commission's Report because it falls short of the mark. Slowly creeping judicial salaries up until 2014, only to reach an already outdated federal benchmark of $174,000, is insufficient.

This Commission was created to ensure the economic independence of New York's judiciary. Despite being a co-equal branch of our tripartite government, New York's judiciary is powerless to set its own pay. Judges have suffered powerlessly for twelve years while the Executive and Legislative branches have failed to agree to mete out even basic cost of living adjustments. Had they done so, New York's judges today would fairly be paid over $192,000 annually. The Commission fails its essential purpose by declining to propose an immediate adjustment to this level. Restoration would have signaled soundly that at last New York's judges are free from the shackles of politics.

The Commission ought to have recommended an annual trial-level salary of $192,000 for 2012, with consistent cost of living adjustments to follow. None of this would be a "raise" as the term is commonly used. The adjustment would simply have returned New York's judges to 1999 levels. But it would have ended an embarrassing era during which our judges have earned less than any other judges nationwide on a cost-adjusted basis, less than countless professionals within and without government, less than first-year law associates, and less even than the senior clerks who work for them.

But rather than seize the moment, the Commission is recommending an adjustment that will pay our judges in 2014 the same salary paid to federal judges in 2007. This, despite that the

federal level has been heavily criticized as out-of-date for three years already – and will be even more seriously stale come 2014. Our mission was to end the neglect – not perpetuate it.

I discount the comments submitted to the Commission by the Governor's Budget Director, Robert Megna. He stated incorrectly that our judges should be paid and treated as other State officers and employees, without regard to their judicial status. He thus ignored or failed to understand that the Commission's job was to ensure the economic independence of the Judiciary as a co-equal branch of government. We were required specifically to consider the judiciary's unique status – not ignore it. The Budget Director's analysis was wrong too as regards New York's ability to pay a fair salary, with a legitimate increase equaling less than 58 one thousandths of one percent of the total state budget. Mr. Megna admitted New York could cover the cost if need be. Our judges have already paid over $500 million toward the cost, through their salary forfeitures suffered since 1999. Judges would pay for the small increase going forward, too, without doubt, based on evidence that the Commission received regarding the role judge's play in attracting corporate activity to New York. The budget issue is a red herring, and does not excuse the Commission's failure to cure the problem it was created to correct.

SUBMISSION TO THE

2015 Commission on Legislative, Judicial and Executive Compensation

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APPENDIX C

Submission of Chief Administrative Judge Ann Pfau to
the 2011 Commission on Judicial Compensation

SUBMISSION TO THE

2011 Commission on Judicial Compensation

Ann Pfau
CHIEF ADMINISTRATIVE JUDGE OF THE STATE OF NEW YORK

SUBMISSION TO THE

2011 Commission on Judicial Compensation

EXECUTIVE SUMMARY

ON BEHALF OF THE NEW YORK STATE JUDICIARY, Chief Administrative Judge Ann Pfau makes this Submission to the 2011 Commission on Judicial Compensation to assist it in fulfilling its mandate, pursuant to chapter 567 of the Laws of 2010, to establish appropriate levels of compensation for New York State judges and justices for the four-year period commencing April 1, 2012.

The Commission represents the first opportunity in State history to adjust judicial salaries in a transparent, nonpolitical manner on the basis of rational, objective and predictable criteria. The Judiciary strongly recommends that four widely accepted fundamental principles inform this Commission's historic work:

Fairness	Judges, like all public officers, should receive fair compensation, determined in an equitable manner, that maintains its economic value over time.
Objectivity	Compensation of judges should be based on criteria that are objective and easily evaluated by the public.
Regularity	A regular and predictable process must ensure that salaries, once adjusted, remain adequate and do not lose ground to inflation.
Institutional Integrity	The structure of judicial compensation should promote public confidence in the independence, neutrality, excellence and diversity of the Judiciary, and promote the effective management of courtrooms and staff.

The Judiciary presents the following facts for the Commission's consideration in applying these four core principles:

- A strong Judiciary is vital to every aspect of a civil society, assuring protection of civic freedoms, swift resolution of commercial and other civil disputes, and fair redress of criminal complaints. The Judiciary has long played a central role in maintaining New York's national and international prominence in law and commerce.
- New York's judges have gone without a cost-of-living adjustment or a salary increase since January 1999 — a pay freeze unprecedented in the modern history of any court system in the nation. By April 1, 2012 — the earliest date that this Commission's work can take effect — judicial salaries in this State will have been frozen for more than 13 years.
- Since the last judicial pay adjustment, inflation has eroded the value of judicial salaries by 41%. To date, an average judge serving throughout this period has lost more than $330,000 relative to the cost of living.

- Since the last judicial pay adjustment, when the Legislature set New York Supreme Court[1] salaries at $136,700 — then at par with U.S. District Court salaries — federal judicial salaries have increased by 27.3%. To date, New York judges serving throughout this period have earned approximately $292,000 less than their federal colleagues.
- Since 2008, New York ranks 50th — dead last — in real purchasing power of judicial salaries among the states. New York judges effectively earn less than half of what their counterparts in Tennessee and Delaware earn, and barely half of what their judicial colleagues earn in Illinois and Virginia. Never in New York's modern history have judges been paid so little relative to living costs or the real salaries of other judges nationwide.
- Since the last judicial pay adjustment, New York caseloads have grown by 20% while the number of judgeships has grown by only 2.6%. As a result, New York judges are working harder than ever, while earning far less in real terms.
- Since the last judicial pay adjustment, collective bargaining agreements have caused the pay of a typical non-judicial employee in the Unified Court System to rise by more than 40%, consistent with salary adjustments for Executive branch personnel. For the first time in State history, many non-judicial employees now earn more than the judges they serve.
- Since 1999, salaries of both public- and private-sector attorneys comprising the pool of eligible, experienced and qualified candidates for judicial office in New York have risen steadily and markedly.
- Salary stagnation, salary compression and salary inversion have threatened to hamper the State's ability to retain and recruit judges, diminish public confidence in the quality of the Judiciary, and impact adversely the Judiciary's institutional well-being and governance.

The Judiciary submits that, upon consideration of these core principles and undisputed facts, the Commission should direct an appropriately substantial increase in judicial compensation to take effect in its entirety on April 1, 2012, together with cost-of-living adjustments in the years that follow. This Submission does not recommend a specific compensation amount: instead, it presents the factors that we believe the Commission should consider in exercising its independent judgment and discretion. An adjustment consistent with the rationale set forth below would end the unfairness and damage caused by a 13-year judicial salary freeze, establish pay levels consistent with the valuable and complex work performed by judges, restore an appropriate relationship between judicial and staff salaries in the courts, and prevent the recurrence of this serious problem. Such an adjustment represents a balanced approach, correcting the most entrenched and universally recognized problems affecting the Judiciary, while remaining sensitive to the constraints of the State's current fiscal circumstances.

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1 The Supreme Court is the trial court of general statewide civil and criminal jurisdiction in New York State. *See N.Y. Const., art. VI, § 7(a); Siegel, New York Practice (4th ed.)*, §12. For this reason, the salary of a Justice of the Supreme Court will be used as the benchmark for State judicial salaries and statistical salary comparisons throughout this Report.

These factors lead to the following range of values as appropriate salary levels for the benchmark position of Justice of the Supreme Court:

- **INFLATION:** An adjustment designed to restore the purchasing power of judicial pay to its 1999 level consistent with the rate of inflation would result in a Supreme Court Justice salary of $195,754 in April 2012.
- **STATE RANK:** An adjustment designed to lift New York from 50th to 25th in rank among the States on a cost-adjusted basis would result in a salary of $220,836 in April 2012. A more modest adjustment — from 50th to 40th national rank — would bring that salary to $194,068.
- **NON-JUDICIAL STAFF COMPENSATION:** An adjustment designed to reestablish the 1999 salary ratio between senior law clerks and the justices they serve would result in a salary of $192,218 in April 2012.
- **FEDERAL JUDICIAL SALARIES, ADJUSTED FOR INFLATION:** An adjustment designed to calibrate New York salaries to those of federal judges, with an adjustment for inflation since January 2006, would result in a Supreme Court salary of $193,813.

In urging an immediate adjustment in compensation, the Judiciary is keenly aware of the State's fiscal situation. We recognize that this is a period of shared sacrifice, of belt-tightening, of doing more with less. Over the last year, the court system has slashed expenditures, cut numerous programs, and substantially reduced its workforce in response to State budget constraints. Notwithstanding these fiscal exigencies, judges deserve compensation no less commensurate with the importance of their offices than do the thousands of other public officials, in the Executive and the Judiciary and elsewhere, who consistently received pay increases during the last 12½ years. Any of these adjustments would increase the State budget by less than 76 one-thousandths of one percent annually. The establishment of appropriate judicial compensation is not now, and never has been, a question of the State's ability to pay.

In sum, this Submission's pay recommendations are prudent and responsible. They are rooted as well in a fundamental premise: after such a lengthy pay freeze, the cost of the reform of past practices must not prevent this Commission from fulfilling its urgent mandate to provide appropriate compensation to New York's judges — a mandate critical to preserving the institutional strength of our State government's Third Branch.

I. THE MANDATE OF THE COMMISSION ON JUDICIAL COMPENSATION

On December 10, 2010, the Governor signed into law chapter 567 of the Laws of 2010 (Supp. 2-3),[2] providing for the creation of a Commission on Judicial Compensation. Composed of seven members — three appointed by the Governor, two by the Chief Judge, and one each by the Temporary President of the Senate and the Speaker of the Assembly — the Commission has been charged with the task of examining the adequacy of the salaries and benefits received by State-paid judges and justices of the Unified Court System, and determining adjustments to those salaries. The statute sets forth this mandate as follows:

> (i) examine the prevailing adequacy of pay levels and non-salary benefits received by the judges and justices of the state-paid courts of the unified court system and housing judges of the civil court of the city of New York and determine whether any of such pay levels warrant adjustment; and
>
> (ii) determine whether, for any of the four years commencing on the first of April of such years, following the year in which the [C]ommission is established, the annual salaries for the judges and justices of the state-paid courts of the unified court system and housing judges of the civil court of the city of New York warrant adjustment.[3]

The statute further provides that, in discharging these duties, the Commission shall take into account:

> all appropriate factors including, but not limited to: the overall economic climate; rates of inflation; changes in public-sector spending; the levels of compensation and non-salary benefits received by judges, executive branch officials and legislators of other states and of the federal government; the levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise; and the state's ability to fund increases in compensation and non-salary benefits.[4]

The statute requires the Commission to present its report within 150 days of April 1 in the year in which it is established — for the present Commission, on or before August 29, 2011 — at which time the Commission is deemed dissolved. The proposals of the Commission to adjust judicial compensation will have the force of law, and will supersede inconsistent provisions of Judiciary Law Article 7-A, unless modified or abrogated by law prior to April 1 of the year as to which such proposal applies.

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2 Numbers in parentheses preceded by "Supp." refer to pages in the Supplemental Appendix to this Submission.

3 L. 2010, c. 567, § 1(a).

4 *Id*.

II. GUIDING PRINCIPLES

THE JUDICIARY IS A KEYSTONE OF SOCIETY. Since the founding of our Republic, it has been universally understood that there can be neither liberty, justice, nor public security without an independent, objective and vital judicial branch.[5] New Yorkers turn to their courts by the millions each year to secure fundamental freedoms, enforce rights and obligations, resolve commercial and other civil disputes, protect the vulnerable and fairly adjudicate alleged crimes. New York's civil and criminal justice systems, led by its Judiciary, are a fundament of the State's national and international preeminence in law, business, and civic life.[6]

Consistent with the Judiciary's importance as a separate, non-partisan, and apolitical branch of government, commentators have long recognized the core principles of fairness, objectivity, regularity, and preservation of institutional integrity as fundamental to the determination of appropriate compensation for judges.[7] We believe that these principles should inform the Commission's work, and will briefly address each in turn.

A. FAIRNESS

> In the general course of human nature, *a power over a man's subsistence amounts to a power over his will*. And we can never hope to see realized in practice, the complete separation of the judicial from the legislative power, in any system which leaves the former dependent for pecuniary resources on the occasional grants of the latter. *** It will be readily understood that the fluctuations in the value of money and in the state of society rendered a fixed rate of [judicial] compensation in the Constitution inadmissible. * * * It was therefore necessary to leave it to the discretion of the [L]egislature to vary its provisions in conformity to the variations in circumstances, yet under such restrictions as to put it out of the power of that body to change the condition of the individual for the worse.[8]
>
> Careers in public service demand sacrifice, and those who join the bench must be ready to forego the more lucrative compensation available in the private sector. Nonetheless, judicial salaries should be broadly comparable to the remuneration received by attorneys

5 *See e.g.* Alexander Hamilton, "Federalist 78," in *The Federalist Papers*, ed. Jacob E. Cooke (Middletown: Wesleyan University Press, 1961), pp. 528-29; ed; Cardozo, B., "The Nature of the Judicial Process" (1921), at 90.

6 A detailed description of the courts that comprise the Unified Court System is included in the Supplemental Appendix (Supp. 9-10).

7 *See, e.g.*, National Center for State Courts, Judicial Compensation in New York (2007) (hereinafter "NCSC Report"), at 5-6.

8 Hamilton, "Federalist 79," *The Federalist Papers*, pp. 531-32 (emphasis in original).

> taking similar career paths and by other public servants having comparable responsibility, training and experience.[9]

The principle of fairness in judicial compensation is rooted in three separate ideas. First and foremost, it derives from the notion that an independent and dedicated judiciary requires protection of the value of its compensation against significant erosion relative to living costs. This primary principle of tripartite government, as articulated by our Framers in Federalist 79, seeks to maintain the equity in judicial salaries over time, so that judges "may then be sure of the ground upon which [they] stand[], and can never be deterred from [their] duty by the apprehension of being placed in a less eligible situation."[10] Second, this equity principle speaks to the public interest: appropriate compensation is crucial to attract and retain well-qualified attorneys for judicial service, insulate judges against involvement in politics, avoid compromise of ethical duties, eschew personal wealth as a qualification for judicial office, and assure an independent and excellent Judiciary. Third, the separation of powers implies that the Judiciary not be targeted for disparately negative treatment vis-a-vis other public officials,[11] so as to give the impression — real or perceived — that judges individually are subject to penalty or that the Judiciary as an institution is devalued.

As public servants, judges cannot expect to grow wealthy in State service. But fundamental equity requires that judicial salaries broadly maintain their value over time and not be allowed to consistently shrink as the price exacted of judges for apolitical public service. Likewise, fairness directs that judges not be singled out for special burdens, or compelled to make sacrifices in a manner or duration not asked of other public professionals. Any other result would not only be unfair to judges and the institutional Judiciary but, more importantly, to the public that they serve, and to the cause of an excellent justice system playing its appropriate constitutional role.

B. OBJECTIVITY

> Judicial compensation should be set and revised by reference to an agreed-upon set of objective criteria that can be easily evaluated by the public. The process also should be transparent to the public.[12]

The factors that the Legislature directed the Commission to consider (e.g. rates of inflation, judicial salaries in other states and the federal government) set a path toward objectivity long absent in setting judicial compensation. Objectivity serves several purposes: it helps achieve a wise and consistent result; it demystifies the salary-setting process and avoids the appearance of arbitrariness or irrationality; and it allows the considered factors to be candidly assessed and debated. Honoring this objectivity in these ways will promote public confidence in the rationale of the Commission's recommendation and the ultimate result.

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9 NCSC Report, at 5.

10 Federalist 79.

11 *See generally*, *U.S. v. Hatter*, 532 U.S. 557 (2001).

12 NCSC Report, at 5.

Such objectivity also is required by our Constitution to serve the public's right to a "well-qualified, functioning Judiciary."[13] As the Court of Appeals recently held, "whether the Judiciary is entitled to a compensation increase must be based upon an objective assessment of the Judiciary's needs if it is to retain its functional and structural independence."[14] In this task, the setting of judicial compensation must proceed in "good faith" to avoid rendering the Judiciary "unduly dependent" in either reality or public perception.[15] Objectivity as to both the process and the criteria the Commission employs in its review will best serve these important constitutional and policy objectives.

C. REGULARITY

> The real value of judicial compensation should be maintained through adjustments that respond to inflation so that the salary a judge accepts upon joining the bench is not eroded to the detriment of his or her family. Equity is rarely possible in the absence of regular reviews that respond to cost-of-living increases.[16]

As a corollary to fairness in fixing judicial salaries, there must be a predictable mechanism to ensure that salaries, once adjusted, do not lose ground to inflationary erosion. This Commission's existence and the quadrennial process its authorizing statute requires serve this need for regularity, but only in part. Regularity also requires that the Commission provide for prospective and automatic adjustments gauged to economic forces that otherwise could erode judicial pay and render compensation unpredictable for judges and their families in the future.

D. INSTITUTIONAL INTEGRITY

The proper adjustment of salaries has implications far beyond fairness to individual judges. In any large public institution such as the Judiciary, successful long-term governance requires rational salary distinctions commensurate with the relative authority and responsibility of office-holders. Salary systems must calibrate appropriately between judicial and staff salaries, and between non-judicial staff commensurate with their seniority, experience, authority, and responsibility. This is particularly important in the court system, where the primary purpose of the institution is the exercise of constitutionally-derived powers exclusively held by judicial officers. For similar reasons, salaries must bear a rational relationship to compensation of others in the public and private sector, in New York and elsewhere, who perform similar legal roles. Lastly, salaries have obvious implications for judicial retention and recruitment: as the Court of Appeals recognized, the

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13 *Maron, et al. v. Silver, et al., Larabee, et al. v. Governor of the State of N.Y., Chief Judge of the State of N.Y., et al. v. Governor of the State of N.Y., et al.*, 14 N.Y.3d 230, 257, 260 (2009) (hereinafter *"Chief Judge"*), *citing O'Donoghue v. U.S.*, 289 U.S. 516, 533 (1933).

14 *Id.*, at 259.

15 *Id., citing People ex rel. Burby v. Howland*, 155 N.Y. 270, 282 (1898).

16 *Id.*

adequacy of salaries has an important impact on the diversity and quality of judges — the openness of the judicial career path to qualified New Yorkers of all socioeconomic and experiential backgrounds, and with it public confidence that the Judiciary will continue to reflect the full breadth of the State.[17]

When these institutional standards are ignored — for example, when staff subordinates routinely earn more than the officers whom they serve — the capacity of the Judiciary to preserve its authority, sustain its morale and perform its functions diminishes, perhaps irretrievably. Redressing this threat, and preventing its recurrence, is a separate and vitally important goal that must inform this Commission's recommendations.

[17] *Chief Judge*, 14 N.Y.3d at 263 (absent salaries sufficient to attract well-qualified individuals to judicial service, "only those with means will be financially able to assume a judicial post, negatively impacting the diversity of the Judiciary and discriminating against those who are well qualified and interested in serving, but nonetheless unable to aspire to a career in the Judiciary because of financial hardship that results from stagnant compensation over the years").

III. RECENT JUDICIAL SALARY STAGNATION IN NEW YORK—ANALYSIS AND CONSEQUENCES

IN NEW YORK STATE OVER THE PAST 12½ YEARS, these fundamental judicial compensation principles of fairness, objectivity, regularity, and institutional integrity have been repeatedly ignored. The last salary adjustment for New York's State-paid judges and justices was effective January 1, 1999.[18] Since then, New York judges have received neither cost-of-living adjustment nor pay increase,[19] despite steady inflation that has seriously eroded the real value of their compensation. No other state in the nation has subjected its judges to such a lengthy period of stagnant compensation. All state and federal judges in the country have received one or more pay increases since 1999, with an average increase of over 3.2% per year. As a result, New York judges' salaries — which once ranked first in the nation — have fallen far behind those of their colleagues in other states, and currently rank last in the nation when adjusted for living costs.[20] During this same period, judges have been asked to work harder than ever before: case filings in New York courts have increased 20%, while the number of judgeships has increased by only 2.6% (Supp. 67-70).

New York State judges now earn considerably less than other professionals with comparable education and experience, in both the public and the private sector. The list of public employees earning substantially more than judges is lengthy and growing, and includes District Attorneys in New York City, deans of New York's public law schools, professors in the State and City University systems, public school administrators, and many others. Many non-judicial employees in New York's judicial branch (including the law clerks that serve State judges), having received the same pay increases as employees of the Executive branch over the past 12 years, now earn more than the judges who supervise them. New York judicial salaries also lag well behind those who lead many not-for-profit organizations or teach in public law schools. Unsurprisingly, the magnitude of the disparity between judges and attorneys in law firms is even more striking.[21]

Given these trends and the importance of an independent and fairly compensated judiciary, support for judicial pay reform has been virtually unanimous. Voices statewide from across

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18 L. 1998, c. 630, § 16.

19 Commencing in State Fiscal Year 2008-2009, State judges have been eligible to receive disbursements or reimbursements from the Judicial Supplemental Support Fund for qualifying expenditures made in connection with their official duties, including bar association dues, educational fees, reference materials, and other related expenses.

20 *See* § III(B), *infra*.

21 At major New York law firms, first-year associates — new law school graduates, many of whom have not yet passed the bar — now earn a $160,000 base salary, more than any New York State judge, including the Chief Judge. Even at smaller firms in New York State, compensation far outstrips judicial salaries. A statewide study released in 2004 by the New York State Bar Association found that the annual compensation of partners at firms with 10 or more lawyers averaged $293,567, more than twice the pay of a Supreme Court Justice.

government,[22] the bar,[23] the business community[24] and government reform groups[25]— as well as many editorial boards across the State[26] — have advocated for an increase in judicial compensation for nearly a decade: a compilation of their statements is included in the Supplemental Appendix (Supp. 121 *et seq*.). Prior governors proposed judicial pay adjustments along the broad lines proposed in this Submission,[27] and both Houses of the Legislature separately passed adjustments along those lines.[28] Various lawsuits also addressed this subject.[29] Common throughout has been a frank recognition of the need both to raise judicial salaries to an appropriate level and to establish a fair process for future salary adjustment.

In sum, measured by any factor relevant to the economic calculus of compensation — the consumer price index; judicial salaries in other jurisdictions; compensation of non-judicial employees; or federal judicial salaries (adjusted for inflation) — the consequences of the failure to raise New York's judicial salaries have been broadly recognized and profound. We now address those factors in greater detail.

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22 *See, e.g.,* American Judges Association, Statement in Support (June 27, 2007); Conference of Chief Justices, Resolution (Jan. 30, 2008); District Attorneys Association of the State of New York, Letter of Support (Supp. 189-196).

23 *See, e.g.,* New York State Bar Association, Letter of Support (March 19, 2008); Asian American Bar Association, "Judges Have Waited Long Enough" *N.Y. Law Journal* (Mar. 21, 2008); Association of the Bar of the City of New York, Letter of Support (Mar. 27, 2008), Kamins, "Increased Pay for Judges," *N.Y. Times*, Mar. 18, 2007; Conference of Columbian Lawyer Associations, resolution (May 2, 2005); New York State Bar Association, Letter to Governor (Mar. 29, 2008), Resolution (May 5, 2005); New York State Law School Deans, Letter to Governor and Legislative Leaders (Jun. 14, 2007); New York State Trial Lawyers Association, "An Open Letter to the Judiciary of the State of New York," *New York Law Journal* (Apr. 25, 2007) (Supp. 189-190; 208-221).

24 *See, e.g.,* General Counsels of Major Corporations, Letter in Support (May 31, 2007); Partnership for New York City, Statement in Support (Dec. 1, 2006) (Supp. 205-207; 229-230).

25 *See, e.g.,* Brennan Center for Justice at NYU School of Law, Letter of Support (Oct. 5, 2006); Citizens Union of the City of New York, Letter of Support (Apr. 24, 2007); The Committee for Modern Courts, Letter of Support (Dec. 24, 2007); League of Women Voters of New York State, Letter of Support (Apr. 23, 2007) (Supp.224-228).

26 *See e.g. Albany Times Union*, "Injustice to Judges" (Feb. 7, 2008), "A Judge's Pay" (Jan. 9, 2008), "Paying Judges," (Dec. 9, 2007), "Unjust Salaries" (Apr. 11, 2007), "An Overdue Raise" (Jun. 1, 2005); "A Judge's Pay" (Feb. 10, 2005); *Batavia Daily News*, "Judges Worthy of Hire" (May 5, 2007); *Buffalo News*, "Stopping the Pay Raises" (May 2, 2007); *Elmira Star-Gazette*, "New York Judges Deserve a Bigger Paycheck" (Dec. 13, 2007); *The Journal News*, "Compensating for Mistakes" (Jan. 26, 2008); "The Cost of Justice" (Jun. 3, 2005); *N.Y. Daily News*, "An Injustice to Judges" (Mar. 31, 2008); "Contempt of Courts" (Dec. 3, 2007); "Give the Judges a Raise" (Apr. 14, 2007); "Justice for Judges" (Jun. 6, 2005); *N.Y. Law Journal*, "Bar Should Mobilize for Judicial Salary Hikes" (Apr. 11, 2007); *N.Y. Times*, "Fair Pay for Judges" (Dec. 18, 2007); "Stop Stalling on Judicial Raises" (Dec. 11, 2007); *Newsday*, "State's Judges Need Fair Shake" (Dec. 7, 2007), "Find a Way to Up Judges' Pay" (Apr. 4, 2007), "State Judges Deserve Raise" (Mar. 26, 2005); *Poughkeepsie Journal*, "State Judges Merit an Increase in Pay" (Dec. 8, 2007), "Support Judicial Pay Raise in New York" (May 19, 2007); *Rochester Democrat & Chronicle*, "Bumbling and Fumbling" (May 3, 2007), "Judicial Pay Equity (Apr. 13, 2007), "Judicial Sacrifice" (May 1, 2005); *Staten Island Advance*, "An Overdue Raise" (Dec. 5, 2007), "Boost Judges' Pay" (Apr. 19, 2007); *Syracuse Post Standard*, "Judges' Pay" (Feb. 18, 2007); *Troy Record*, "Get Behind Plan for Judges' Raise" (May 2, 2007), "State Judges Long Overdue for Raises" (Apr. 16, 2007); *Utica Observer Dispatch*, "Overhaul Pay System for State Judges" (Dec. 16, 2007); *Watertown Daily Times*, "Judicial Pay" (Dec. 9, 2007), "Judicial Pay" (Apr. 11, 2007), "Judicial Salaries" (Oct. 25, 2005) (Supp.132-185).

27 *See* Governor's Program Bill #18-2007 (Spitzer); Governor's Program Bill #68-2005 (Pataki).

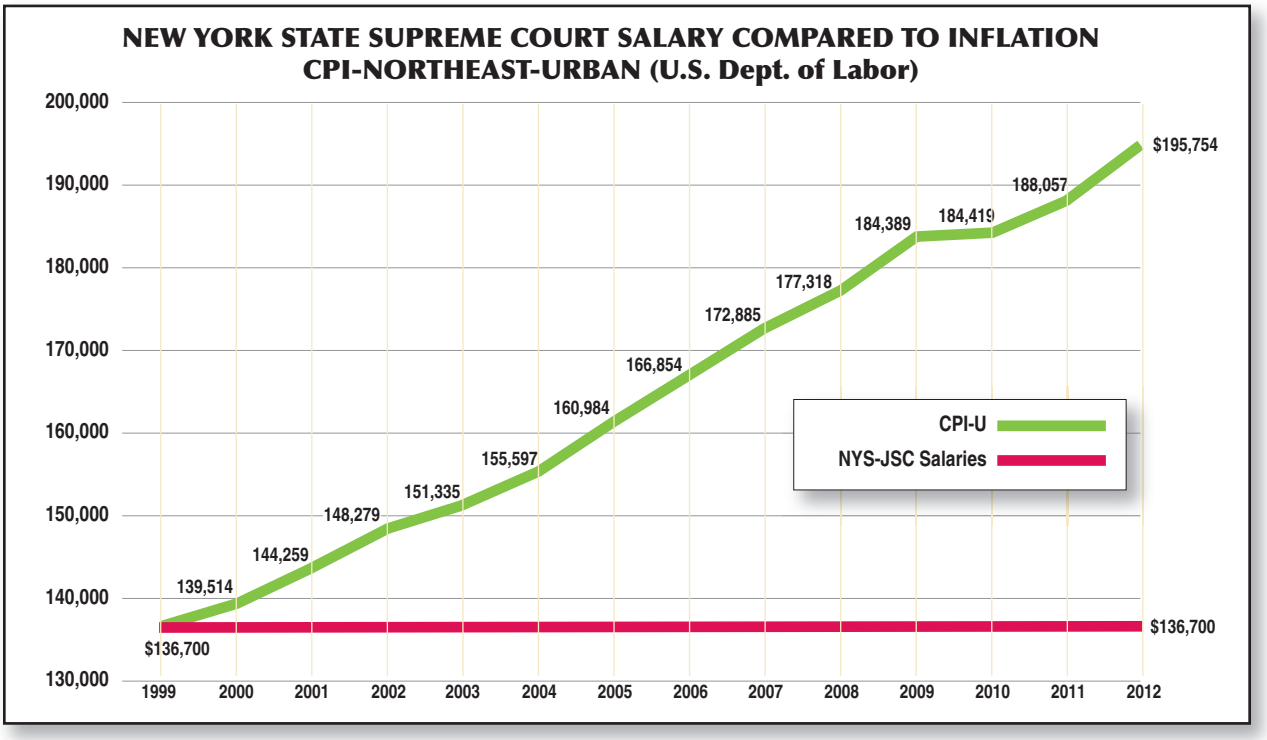
28 *See* Senate Bills 5313 and 6550 (2007); Assembly Bill 4306-B (2007).

29 *See, e.g., Chief Judge*, 14 N.Y.3d 230 (2009).

A. INFLATIONARY EROSION OF JUDICIAL COMPENSATION

To calculate the impact of inflation upon judicial salaries, this Submission employs the Consumer Price Index — Northeast Urban Region ("CPI-U"), constructed monthly by the U.S. Department of Labor, Bureau of Labor Statistics, which provides an official statistical measure of average price change in a fixed market basket of goods and services for the Northeastern states. This standard index's weighting of core living expenses — such as food, housing, health care and transportation — is widely recognized as an accurate sample-based price measure against which to calibrate salaries and benefits for most Americans, including professionals and managers most comparable to judges and attorneys eligible for judicial service.[30]

Since January 1, 1999, the CPI-U has risen 41%, with typical annual increases of between one and four percent. The following chart displays the impact of those increases upon the salaries of Justices of the New York Supreme Court:



In sum, the effect of inflation — or as the Framers described it, "fluctuations in the value of money"[31] — on the annual compensation of New York's Judiciary have been devastating. The cumulative effect of inflation is even more substantial. Based on the CPI-U, each Supreme Court Justice

30 *See* U.S. Department of Labor, Bureau of Labor Statistics, "Consumer Price Index, Northeast," available at *www.bls.gov/ro1/914.htm* (accessed June 30, 2011).

31 Federalist 79.

serving with a fixed salary during this full 12½ year period lost $332,583 in purchasing power — or nearly 2.5 full years of current salary since 1999.[32]

B. COMPENSATION OF JUDGES IN OTHER STATES

New York's Judiciary has long been, and today continues to be, preeminent among the nation's court systems. Historically, the salaries paid to New York's judges reflected this status.[33] But in light of pay stagnation over the last 12½ years — the longest salary freeze of any judiciary in modern history — today they comprise the lowest judicial compensation in the nation.

Without taking regional living costs into account, judicial salaries in New York rank 20th among states nationally — far behind such lower-cost and lower-population states as Delaware, Nevada, Tennessee and Washington. Due to the protracted pay freeze, New York judges today earn the same nominal salaries as judges in Arkansas and Louisiana, where living costs and dockets are markedly lower. Compared to high-population states to which New York typically compares for policy purposes, New York's judicial pay is strikingly low: trial judges in Illinois earn $178,835 and in California earn $178,789, or 31% more than their New York counterparts; in New Jersey and Pennsylvania, trial judges earn $165,000 and $164,602, respectively, or 21% more than their New York colleagues just across the state line.[34]

But nominal judicial pay is not a metric of equity: in light of New York's considerably higher living costs, the true extent of underpayment caused by the judicial pay freeze is far greater than these nominal rankings indicate.

One well-recognized measure of regional differences in living costs is the cost-of-living price index of the Council for Community and Economic Research ("C2ER"), used by the nonpartisan National Center for State Courts to compare judicial salaries across different jurisdictions.[35] The C2ER index examines average costs of goods and services for the latest four fiscal quarters in selected reporting jurisdictions across the nation. Based on the C2ER index, weighted for population density, New York judges rank 50th — dead last — in real salary among the 50 state judiciaries. New York

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32 We recognize that chapter 567 does not expressly include retroactive relief within the scope of the Commission's force-of-law salary adjustment. However, this cumulative loss of purchasing power through inflation constitutes the clearest measure of economic injury caused by the lack of timely past adjustments — injury suffered both by incumbent judges, and by those who have retired and will not benefit from prospective measures. If the Commission were to propose some means of providing retroactive relief for these losses, the Judiciary would strongly support such a proposal.

33 In 1909, salaries of Supreme Court Justices in New York City were $17,500, the equivalent of over $400,000 today, and in 1936, in the middle of the Depression, they were $25,000, the equivalent of about $390,000 today — both almost three times current salaries. In 1926, a Judge of the New York Court of Appeals received a salary of $22,000 (*see* L. 1926, ch. 94), the equivalent of over $269,000 today; in 1952, that salary was $32,500 (*see* L. 1952, ch. 88), over $265,000 in today's dollars; in 1975, a Judge of the Court of Appeals earned $60,575 (*see* L. 1975, ch. 152), the equivalent of about $244,000 today.

34 *See* National Center for State Courts, "Survey of Judicial Salaries," Vol. 34, No. 2.

35 *See id.*, at 2. NCSC describes the C2ER index as "the most widely accepted U.S. source for cost-of-living indices." *Id.*

judges effectively earn less than half of what their counterparts in Tennessee and Delaware earn, and barely half of what their judicial colleagues earn in Illinois and Virginia.[36]

Our State's place in the national ranking of judicial compensation is not a trivial statistic of local pride. Such ranking speaks volumes about how our society values its Judiciary and, by implication, how it values the rule of law that the Judiciary protects. It gauges the strength of our commitment to attract the very best and brightest of legal minds into responsible roles of civic governance. It measures our understanding, relative to that of other states, that exceptional judges are not a luxury, but a necessity in a state of national and international prominence — whether to maintain the constitutional checks and balances of vibrant government, to assure continued commercial excellence, to preserve the civil rights of our citizens, or to bring about the swift and wise resolution of the myriad of private disputes that are the judiciary's primary task. That New York has fallen to last in the nation by this calculus is proof not only that our State has forgotten its judges — but that it has forgotten, in some measure, an essential component of its greatness.

The following table presents the ranking of New York State in terms of both nominal salary paid and salary purchasing power in light of regional cost of living and illustrates the true depth to which New York real judicial salaries have fallen.

36 *See id.*

NATIONAL RANKING OF JUDICIAL SALARIES

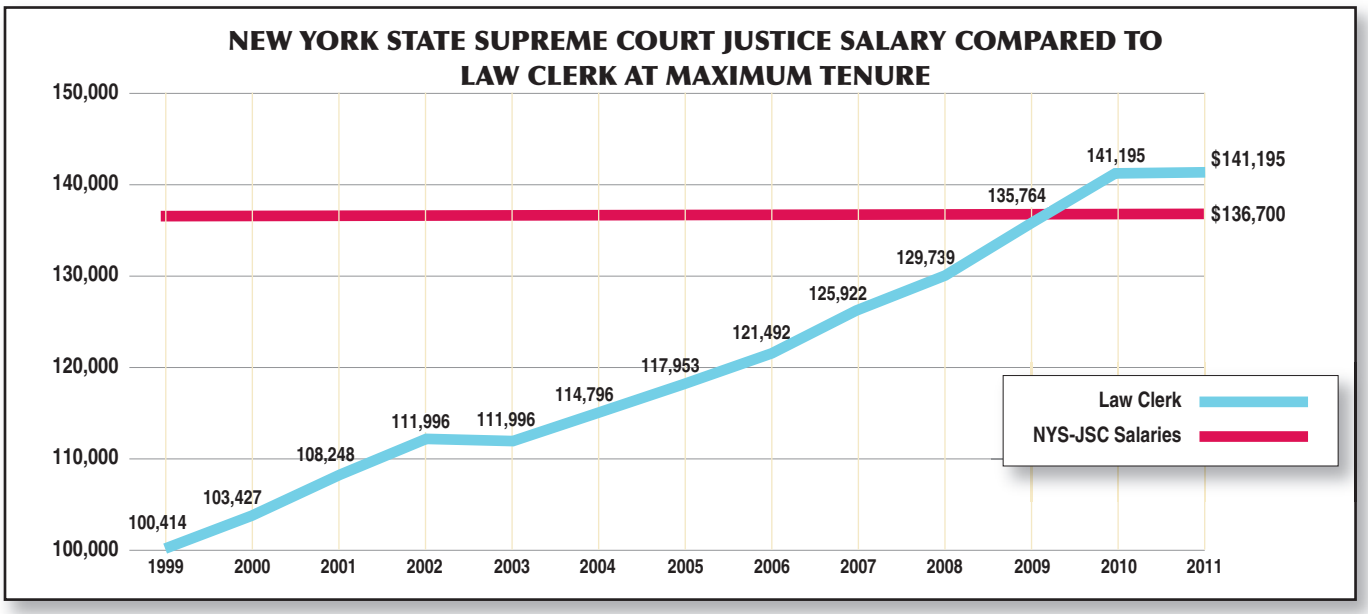
BASED ON ACTUAL SALARY			BASED ON ADJUSTED SALARY	
STATE	2010 ACTUAL SALARY	RANKING	STATE	2010 ADJUSTED SALARY
Illinois	$178,835	1	Tennessee	$173,004
California	$178,789	2	Delaware	$163,298
Alaska	$174,396	3	Illinois	$160,103
Delaware	$168,850	4	Virginia	$158,134
New Jersey	$165,000	5	Nevada	$157,480
Pennsylvania	$164,602	6	Georgia	$153,665
Nevada	$160,000	7	Arkansas	$147,624
Virginia	$158,134	8	Iowa	$147,430
Tennessee	$154,320	9	Nebraska	$147,216
Washington	$148,831	10	Alabama	$144,944
Connecticut	$146,780	11	Florida	$144,784
Arizona	$145,000	12	Pennsylvania	$144,514
Rhode Island	$144,861	13	Arizona	$144,135
Georgia	$144,752	14	Michigan	$143,654
Florida	$142,178	15	Louisiana	$141,495
Maryland	$140,352	16	Kentucky	$139,709
Michigan	$139,919	17	Indiana	$138,836
Iowa	$137,700	18	Washington	$137,552
New Hampshire	$137,084	19	Oklahoma	$136,824
NEW YORK	**$136,700**	**20**	Utah	$135,123
Louisiana	$136,543	21	Texas	$134,989
Arkansas	$136,257	22	North Carolina	$133,567
Hawaii	$136,127	23	Alaska	$133,025
Alabama	$134,943	24	South Carolina	$132,431
Utah	$132,150	25	Colorado	$131,625
Nebraska	$132,053	26	Kansas	$130,475
South Carolina	$130,312	27	California	$129,934
Massachusetts	$129,624	28	Missouri	$129,275
Minnesota	$129,124	29	Ohio	$128,006
Wisconsin	$128,600	30	Wisconsin	$126,950
Colorado	$128,598	31	Wyoming	$126,083
North Carolina	$127,957	32	New Jersey	$126,050
Indiana	$125,647	33	North Dakota	$125,743
Wyoming	$125,200	34	West Virginia	$125,405
Texas	$125,000	35	Minnesota	$120,339
Kentucky	$124,620	36	Idaho	$117,692
Oklahoma	$124,373	37	Rhode Island	$117,487
Vermont	$122,867	38	New Hampshire	$117,366
Ohio	$121,350	39	Maryland	$115,802
Missouri	$120,484	40	South Dakota	$115,336
Kansas	$120,037	41	New Mexico	$114,026
North Dakota	$119,330	42	Connecticut	$112,734
West Virginia	$116,000	43	Mississippi	$110,233
Oregon	$114,468	44	Montana	$106,763
Idaho	$112,043	45	Oregon	$103,497
Maine	$111,969	46	Massachusetts	$102,713
New Mexico	$111,631	47	Vermont	$101,964
South Dakota	$110,377	48	Maine	$96,111
Montana	$106,870	49	Hawaii	$82,153
Mississippi	$104,170	**50**	**NEW YORK**	**$81,710**

C. COMPENSATION OF NON-JUDICIAL PERSONNEL OF THE COURTS

A third objective criterion for sizing a proper judicial salary adjustment is derived by reference to pay increases provided to a typical non-judicial employees over the past 12½ years, pursuant to pay packages ratified by the Legislature and signed into law — packages based upon Judiciary collective bargaining agreements closely modeled upon agreements negotiated by the Executive Branch with its own employees.

These annual pay increases, which have averaged approximately 2.5% per year for most Executive and Judicial branch employees, and have raised the typical salary of non-judicial staff by more than 40%, operate as a cost-of-living adjustment to insulate their pay against the effects of inflation for nearly all New York State employees. However, the failure to provide similar cost-of-living adjustments to judges over the last 12½ years has upended long-standing salary distinctions based on the fundamental difference between judicial officers (who are constitutionally empowered to exercise judicial authority) and non-judicial personnel (who assist in the exercise of that authority in subordinate roles). For the first time in the history of the court system, hundreds of non-judicial staff now earn more than judges and justices in the Unified Court System whom they serve.

For example, at the time of the last judicial pay adjustment, judicial law clerks earned between $70,435 and $100,414 depending on experience and seniority. This range, ratified by the Legislature and consistent with percentage increases negotiated by the Executive branch for its employees, set law clerk salaries at between 51.5% and 73.5% of the salary of the Justice to whom they reported. This salary relationship appropriately balanced policy interests to promote staff-level professionalism and retention, while reflecting the judge's managerial authority over staff. With increases since 1999, those more senior law clerks today earn $141,195 — 103.2% of their judges' salaries. Similarly disturbing salary compression and inversion trends exist between judges and other non-judicial staff. The following chart illustrates this trend for those senior law clerks.



Of course, the problems of salary compression and inversion are not unique to the Judiciary. They occur as well in some Executive branch agencies where commissioners' salaries, set by statute, may be exceeded by those of a handful of senior deputies. Yet nowhere else in State government are inversion and compression so widespread as in the Judiciary; nowhere is this problem worsening so rapidly; nowhere is it as consequential. In contrast to Executive agency heads, whose tenures are typically brief and at-will, judicial officers are elected or appointed for substantial terms (typically fourteen or ten years), designed to assure their indifference to outside influence. Judges alone are required to obtain a significant level of professional experience — education as attorneys and years of service — to qualify for the offices that they hold. Judges alone serve a branch of government that can neither vote for nor exercise veto over the budgets that determine their salaries. In sum, while salary compression and inversion is damaging in any organization or branch of government, its impact upon the Judiciary is uniquely pervasive and damaging.

D. THE STATE'S FISCAL CONDITION

No responsible analysis of the status of judicial pay in New York can be complete without a frank assessment of the State's fiscal condition. That condition is undeniably serious. As the Governor observed in his 2011 State of the State address[37] and on numerous occasions since, the State is facing a significant deficit and an urgent need to alter the manner and means by which government delivers services. As a result, over the last year, the court system has slashed expenditures, cut numerous programs, and substantially reduced its workforce. It remains firmly committed to partnership with the Executive and Legislative branches in addressing these serious fiscal issues.

Yet for three distinct reasons, the State's fiscal condition should not prevent this Commission from fulfilling its mandate to set forth an equitable adjustment of judicial salaries. Foremost is the principle of fundamental procedural fairness. As we have noted, by April 2012 the Judiciary will have waited more than 13 years without such an adjustment. Since the State last adjusted judicial salaries in 1999, the State budget has grown by 81% — from $73.3 billion in fiscal 1999-2000 to $132.5 billion in fiscal 2011-2012. During that period, including many years of relative plenty, the State repeatedly chose to defer the issue of judicial pay.[38] Had it instead acted in a timely manner, there now would be no need for either a large catch-up adjustment or a discussion of ability to pay. Having argued against and suffered through this inaction for years, judges should not be required to await better economic times for remedy of such unjust treatment.

Moreover, while any increase in state expenses is consequential, the proposed adjustments to judicial salaries will not threaten the State's fisc. Indeed, every $10,000 statewide increase in judicial salaries constitutes an increase in the State budget of only nine one-thousandths of one percent. Even in these difficult fiscal times, resources do not pose an obstacle to reform of past practices.

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37 Cuomo, "New York at a Crossroads: A Transformation Plan for a New New York" (2011 State of the State), at 2-4.

38 One result of the State's failure to adjust judicial salaries equitably over the last 12-1/2 years has been the saving of several hundreds of millions of dollars for other State purposes. In light of such savings through past delay, it defies all notions of fairness to claim that a current adjustment is too costly for the State to absorb.

Finally, as we noted earlier in this Submission, the establishment of this Commission marks the first opportunity to adjust judicial salaries in a transparent and non-political manner, on the basis of rational, objective, and predictable criteria — a manner in stark contrast to the gridlock and ad hoc convenience of past political practice. This mandate, we submit, epitomizes the standards of fair, open and rational governance that the Governor and others have recommended as essential to New York's future. To decline to implement appropriate salary measures because they entail new costs would not only perpetuate and worsen the ill effects of past practice: it would shrink the Commission's historic mission by half, permitting identification of a longstanding problem, but not its cure.

E. OTHER CONSIDERATIONS AND CRITERIA

1. Federal Judicial Salaries. An additional factor for consideration in appropriate adjustment of New York judicial salaries — though no longer the best comparative metric — is compensation paid to the federal bench. In 1998, when the Legislature last adjusted judicial salaries, it set the Supreme Court Justice salary at $136,700, the salary then paid to U.S. District Court judges. Since that adjustment, U.S. District Court judges have received nine salary increases, most recently in 2009, and today earn $174,000.00 annually.

Yet while parity with federal District Court judges may well have been appropriate in 1998, and has been proposed by the Judiciary in the past, it is appropriate no longer. For several years, federal court authorities have recognized the inadequacy of even these enhanced judicial salaries, and have repeatedly sought higher compensation.[39] Moreover, the real purchasing power of the federal District Court salary has trailed CPI-U inflation measures since 2006, and is now substantially less than it was in 1999. Finally, while restoration of equality with federal judicial salaries reestablishes a facial parity in compensation, it ignores a significant consequence of past differences: over the last 12 years, U.S. District Court judges have earned an accumulated total of approximately $292,000 more than their State Supreme Court counterparts. Accordingly, federal judicial salaries provide an appropriate standard for New York judicial compensation only when adjusted for inflation according to the CPI-U since 2006 — the point at which federal salaries began to trail inflation. Such an adjustment would result in a Supreme Court Justice salary of $193,813 in April 2012.[40]

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39 *See* Roberts, C.J., "2008 Year-End Report on the Federal Judiciary," at 7-8 ("I suspect many are tired of hearing it, and I know I am tired of saying it, but I must make this plea again — Congress must provide judicial compensation that keeps pace with inflation. Judges knew what the pay was when they answered the call of public service. But they did not know that Congress would steadily erode that pay in real terms by repeatedly failing over the years to provide even cost-of-living increases"); *available at http://www.supremecourt.gov/publicinfo/year-end/*2008year-endreport.pdf (accessed May 25, 2011); Rehnquist, C.J., "2006 Year-End Report n the Federal Judiciary," at 1 (the "failure to raise judicial pay" for federal judges "has now reached the level of a constitutional crisis that threatens to undermine the strength and independence of the federal judiciary"), *available at* http://www.supremecourt.gov/publicinfo/year-end/2006year-endreport.pdf (accessed May 17, 2011).

40 The salaries of New York judges have exceeded federal judicial salaries at various times throughout the State's history — most recently between May 1985 and July 1987, and again between November 1987 and January 1990 (Supp. 57).

2. Other Statutory Factors. Chapter 567 directs the Commission to consider in the course of its work "the levels of compensation and non-salary benefits received by . . . executive branch officials and legislators of other states and of the federal government" and "the levels of compensation and non-salary benefits received by professionals in government, academia and private and nonprofit enterprise."[41] To facilitate this review, the Supplemental Appendix to this Submission lists the compensation of the executive and legislative branches of the federal government and sister state governments, as well as salaries for comparable professionals in the private, public, academic and nonprofit sectors (Supp. 100-117, 545-609). We believe that these factors and statistics fully support this Submission's reasoning and recommendations.

3. Pay Parity Between Courts. In addition, another longstanding salary problem endured by New York judges is the many pay disparities within and between trial courts throughout the State.[42] Past commissions and commentators have criticized these disparities as irrational and called for their elimination.[43] We agree.

41 L. 2010, c. 567, § 1(a).

42 The Judiciary Law details numerous such disparities, many of which lack clear justification. For example, judges of the Family and Surrogate's Courts in Albany County earn $119,800, while County Court judges earn a much higher $131,400; in neighboring Schenectady County — with comparable living costs — judges of the County, Family and Surrogate's Courts earn $119,800; in Broome County, judges of the County and Surrogate's Courts earn $119,800, while Family Court judges earn $125,600; in Dutchess County, judges of the County and Family Courts earn $125,600, while the Surrogate earns $135,800. *See also* (Supp. *52-55*).

43 *See, e.g.,* Report of the Jones Commission I (1987) (calling for pay parity among judges of the major trial courts); Report of the Jones Commission II (1992) (calling for further study and evaluation of the subject).

IV. THE COMMISSION SHOULD IMPLEMENT AN IMMEDIATE AND SUBSTANTIAL SALARY INCREASE

BASED ON THE FOREGOING FACTS, the Judiciary strongly recommends that the Commission implement an immediate salary increase to restore the purchasing power of judicial compensation to its level at the last adjustment in 1999. That adjustment, we submit, should be derived from the factors detailed above — inflation, judicial salaries in other States, non-judicial staff salaries, and federal district court judicial salaries (adjusted for inflation). Using the 1999 and current salary of a Justice of the Supreme Court ($136,700) as a benchmark,[44] those factors establish the following values:

- An adjustment consistent with the CPI-U measure of inflation (41%) would require a Supreme Court salary of $195,754 in April 2012, to restore the purchasing power of judicial pay to its 1999 level.[45]
- An adjustment sufficient to lift New York from 50th to 25th in rank among the States on the C2ER cost-adjusted index would require a salary of $220,836. An adjustment from 50th to 40th national rank would bring the Supreme Court justice salary to $194,068 in April 2012. Even at 40th in rank, New York cost-adjusted judicial salaries would still be significantly lower than all large states to which New York typically compares for policy purposes (e.g. California, Florida, Illinois, Michigan, Pennsylvania).
- An adjustment sufficient to reestablish the 1999 ratio between senior law clerks and the Supreme Court justices they serve would require an adjustment of 40.6%, resulting in a salary of $192,218 in April 2012.
- An adjustment sufficient to calibrate New York salaries to those of federal judges (with an adjustment for inflation since January 2006), would result in a Supreme Court salary of $193,813.

This spectrum of values — $192,000 to $220,000 — constitutes the appropriate range for judicial salary adjustment in New York under the principles of fairness, objectivity, regularity and institutional integrity.

As we have described above (*infra,* pp. 18-19), the current fiscal climate presents no valid justification for continued underpayment of the Judiciary, or half-measures in implementation of the Commission's mandate. While such measures might present an appearance of austerity, in reality they would have a negligible impact, saving in their entirety eighteen one-thousandths of one per-

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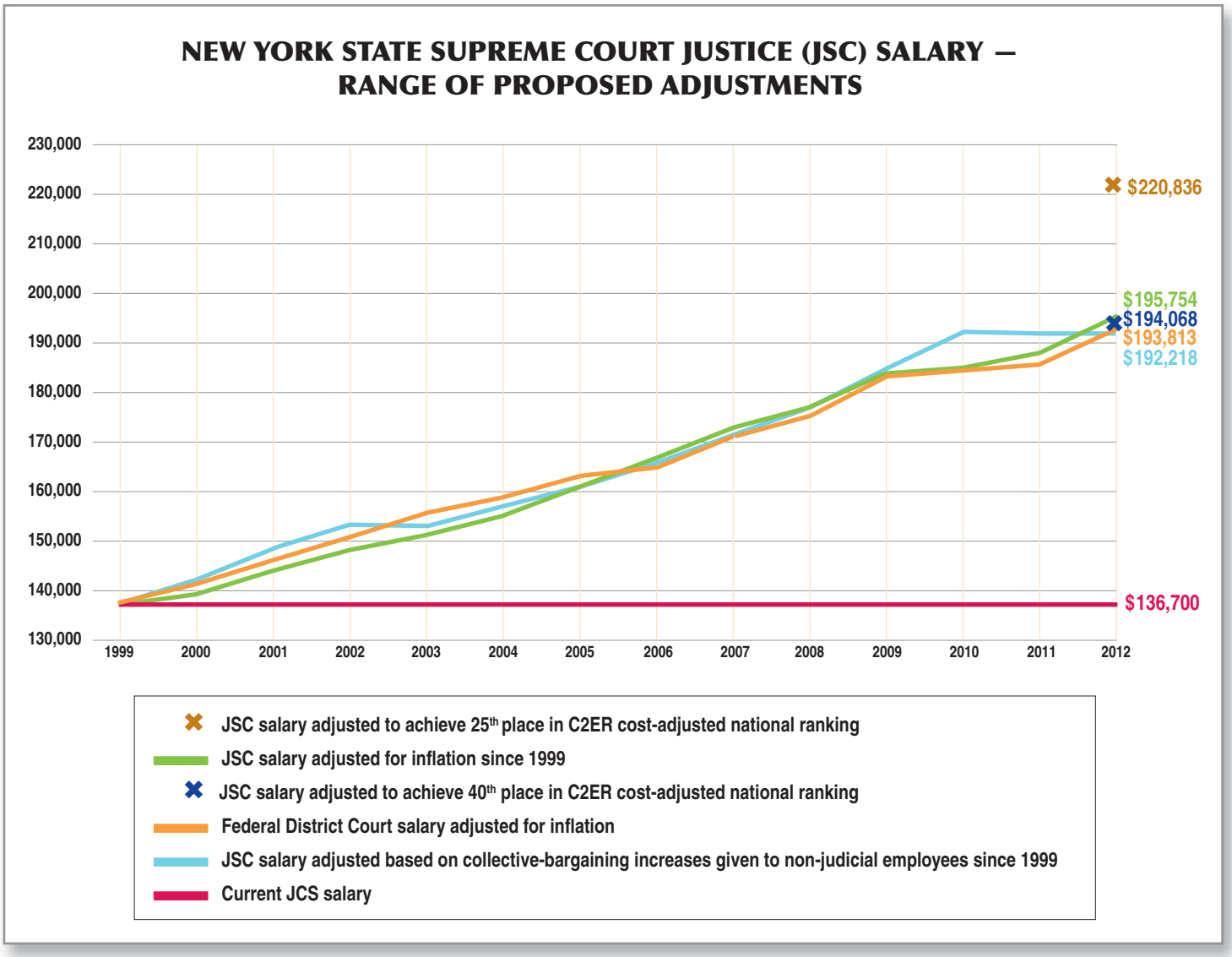
44 As noted *supra*, the salary of a Justice of the Supreme Court has been employed as a benchmark throughout this Report. To the extent that judicial salaries of the judges or justices of appellate courts are greater than those of Supreme Court Justices, those marginal distinctions should be preserved proportionately. *See, e.g.* Judiciary Law §§ 221 (salary of Judges of the Court of Appeals), 221-a (salary of Justices of the Appellate Division of Supreme Court). To the extent they are lower, we commend the Commission's attention to section III(E)(3), *infra*.

45 This figure asumes an ongoing inflation rate of 2.7%, the average annual rate since 1999.

cent of the State's budget over four years.[46] On the other hand, further postponement of immediate implementation of a fair salary would needlessly perpetuate past economic injury; compound such injury irreparably upon the significant number of judges who may be compelled by age or other circumstances to retire from the bench during the intervening period; and render the Commission's recommendations contingent upon political vagaries far in the future. After all that New York's judges have endured over the last 12½ years, further delay in remedy is neither necessary nor principled.



46 An immediate salary increase to offset inflation since 1999, or to achieve 40th place in the C2ER cost-adjusted ranking, or to reestablish the 1999 ratio between senior law clerks and Supreme Court Justices would increase the State budget by less than 55 one-thousandths of one percent annually.

Finally, we urge the Commission to adopt cost-of-living adjustments to preserve judicial salaries against future erosion. For decades, judicial compensation in New York has followed a familiar cyclical pattern. After years of frozen pay, judges typically received a catch-up adjustment, restoring the value of salaries in part, but eschewing retroactive payment to compensate for the significant economic losses during the period of salary stagnation. Subject to the exigencies of politics, the adjusted salary thereafter would remain fixed for another lengthy period, without cost-of-living adjustment or other increase, until the cycle began anew.

This Commission has the power to break this pattern and establish a system in which judicial salaries, once set, are regularly adjusted to maintain their value. Implementation of an annual cost-of-living adjustment, to take effect in April 2013, April 2014 and April 2015 (based on the average CPI-U for the preceding two calendar years) would yield numerous benefits: it would eliminate the conundrum of major catch-up adjustments, give judges a long-absent measure of salary predictability, and permit rational budget planning by court administrators. While not a cure for past judicial salary inequities, we believe that provision of a cost-of-living adjustment is the simplest means of ensuring that those inequities do not reoccur.

V. CONCLUSION

AFTER SO MANY YEARS OF DECLINING REAL SALARIES for New York judges, we respectfully submit that this Commission should fulfill its mandate in the manner urged by virtually all observers across government, the bar, academia, the business and civic sectors, the government reform community and the press: New York judges must receive an immediate pay increase to restore the lost purchasing power of their salaries, with future cost-of-living adjustment so that these reforms do not lose ground to inflation. Fairness, rationality and the Judiciary's institutional integrity as an independent constitutional branch of government require nothing less.

SUBMISSION TO THE
2011 COMMISSION ON JUDICIAL COMPENSATION

APPENDIX A

Supporting Letter of A. W. (Pete) Smith

President, Smith Compensation Consulting, McLean, Virginia

Smith
COMPENSATION CONSULTING

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July 5, 2011

Mr. John McConnell
Counsel
NYS Office of Court Administration
25 Beaver Street (11th Floor)
New York, NY 10004

Dear Mr. McConnell:

This letter puts forth my independent opinion on the report that Chief Administrative Judge Ann Pfau is presenting to the New York Commission on Judicial Compensation.

As a professional with over forty years of compensation consulting experience, I have long been interested in problems of setting fair pay for government employees, including judges. Even recognizing that public service almost always involves some sacrifice and that employment in the private sector will almost always be more lucrative, the disparity between what federal and state judges have traditionally earned and the earnings of their private sector counterparts has seemed too large. The State of New York's failure to increase pay for its judges and justices since 1999 has severely exacerbated this problem, an issue that the Commission can now fix.

I have reviewed Judge Pfau's report in detail and agree fully with its recommendations. It is balanced; it gives full recognition to the difficult economic environment in which raising judicial salaries is being proposed; it documents clearly the economic losses New York judges have suffered and the inequities that have been created; and it provides solid proposals for correcting this problem going forward.

The report does not recommend specific salaries for the top level of justices or other judges. While this will appropriately be the decision of the Commission, my recommendation is that the Commission focus on the higher salary alternatives discussed in the report. The highest number mentioned in Ms. Pfau's report (a salary just over $220,000 for New York Supreme Court Justices) would bring their salaries only to the midpoint of top justice compensation in the 50 states, on a cost-adjusted basis. Undoubtedly there will be some public criticism of such a large raise (roughly $85,000 or 62% over the current level set in 1999), but *any* reasonable adjustment will seem large to some critics, and this is an opportunity to get it right.

Also left open in Ms. Pfau's report is the question of whether there should be some redress for the approximately $330,000 the average New York judge has lost relative to the cost of living during the twelve-year salary freeze. It would not be unprecedented to provide some make-up compensation; other nonprofits have done so in the past, though not to my knowledge affecting such a large group. Further, I am not aware whether such payments would require special legislation. Nonetheless, I would recommend giving this serious consideration if New York judicial salaries are not brought to a fully competitive level.

My final recommendation is that the Commission do everything that it can to support a process to ensure a regular periodic review of judicial compensation beyond 2014. It is vital to the state and the country that we have a strong judiciary system, and there is no reason to let New York judges' compensation continue to erode in the future.

For the benefit of the Commission, this opinion has been provided on a pro-bono basis; I have received no compensation in connection with this letter. Information on my background is attached.

Sincerely,

Pete Smith

Pete Smith
President

Smith
COMPENSATION CONSULTING

A. W. (Pete) Smith, Jr.

Pete Smith has significant governance experience in both the private and public sectors. Mr. Smith now divides his time between serving on corporate and non-profit boards and providing executive compensation consulting services to a broad range of clients, primarily in the non-profit sector.

Mr. Smith spent most of his career at Watson Wyatt Worldwide (now Towers Watson), from which he retired as Chairman & CEO in 1999. As President of Smith Compensation Consulting, his clients now include many of the nation's leading nonprofit institutions.

In his thirty year career with Watson Wyatt, Mr. Smith consulted in areas ranging from executive compensation and benefits design to global human resources strategy. His clients included major Fortune 100 corporations, start-ups, technology firms, multinationals, professional services firms, family held businesses, and nonprofits.

Mr. Smith joined Wyatt in Boston in 1968 as a compensation consultant. In 1972, he was named Executive Vice President of Cole Surveys, then the leading provider of financial institution compensation survey data. In 1985, he was appointed Managing Partner of Wyatt's San Francisco office. He was appointed to the Board of Directors in 1986, as Global Compensation Practice Director in 1987, and as Managing Partner of the Washington, D.C. office (the firm's largest) in 1992. In 1993, he was elected President & CEO. During his tenure, he engineered a major transformation of the firm, strengthening its focus, improving its financial results, and substantially extending its worldwide operations – including combining Wyatt with R. Watson & Sons to form Watson Wyatt Worldwide. The firm recently merged to form Towers Watson.

After retiring from Watson Wyatt, Mr. Smith served as CEO of the Private Sector Council, a non-partisan non-profit dedicated to improving the management of the federal government. At PSC, Mr. Smith advised government officials at the highest levels on a variety of management, governance, and financial issues. While at PSC, Mr. Smith also spent a month in Baghdad advising U.S. and Iraqi officials on the design of Iraqi civil service programs.

A graduate of Harvard and a certified member of the National Association of Corporate Directors, Mr. Smith currently serves on the Boards of Alliance Bernstein, Addx Corporation, Celerant Consulting Government Services, and the Community Foundation of the National Capital Area. He previously served on the Board of the Mid-Atlantic Permanente Medical Group. Active in civic affairs, he has chaired the Board of Directors of the Association of Management Consulting Firms and the National Rehabilitation Hospital, is past Vice Chair of the Nonprofit Roundtable of Greater Washington and the Washington Performing Arts Society, and served as a Trustee of American University. He also served on the Independent Review Committee evaluating governance problems at the Smithsonian Institution.

More information can be found at www.smithcompensationconsulting.com and at Mr. Smith's blog, non-profit musings.

SUBMISSION TO THE

2011 COMMISSION ON JUDICIAL COMPENSATION

APPENDIX B

Supporting Letter of Professor Peter Bearman

Cole Professor of the Social Sciences,
Columbia University, New York, New York

Professor Bearman's curriculum vitae has been set forth in greater detail in the Supplemental Appendix (Supp. 610-624).

COLUMBIA UNIVERSITY
IN THE CITY OF NEW YORK

INSTITUTE FOR SOCIAL AND ECONOMIC RESEARCH AND POLICY

July 6, 2011

John W. McConnell
Counsel
Office of Court Administration
25 Beaver Street (11th Fl.)
New York, New York. 10004

Dear Mr. McConnell,

At your request, I have read the Submission to the 2011 Commission on Judicial Compensation by the Chief Administrative Judge of the Courts and offer the following comments for your consideration.

I preface these comments by noting that I am the Cole Professor of the Social Sciences at Columbia University where I direct the Institute for Social and Economic Policy. In addition I direct the Mellon Interdisciplinary Graduate Training program in social science and humanities, the Paul F. Lazarsfeld Center for the Social Sciences, and the Robert Wood Johnson Health and Society Scholars program. In these roles and through my academic work I have conducted extensive research on a variety of historical and contemporary problems. Most relevant for my comments in this context is my research in organizations and management and the sociology of identity. For the benefit of the Commission, this opinion has been provided on a pro-bono basis; I have received no compensation in connection with this letter. I have appended to this letter a copy of my Curriculum Vitae.

On pages 15-16 of the report it is observed that New York ranks last in State compensation for her judges when adjusted for the cost of living. We have long understood that such state rankings convey meaningful information about the priorities of the citizens and their representatives in the legislative and executive branches of the government. New Yorkers are proud that our state does not rank last in literacy and high school graduation (Mississippi holds this dubious distinction), last in per capita support for our great public libraries (North Dakota holds this distinction), infant mortality (Mississippi), Academic Research and Development (Nevada), proportion of the population with an advanced degree (Arkansas), and proportion of eligible voters who failed to vote in the 2008 elections (Hawaii). The commitment to health, education, development, and the electoral system are expressed by the relative positions of States with respect to these critical benchmarks. And this is also the case for commitment to critical institutions such as the judiciary.

There are three legitimate reasons for ranking last in compensation to the Judiciary. The first is that the activities of the judicial branch are the least complex, and least

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demanding of all State judiciaries. The second is that across all branches of government, the State ranks last in compensation, perhaps because governing is significantly less complex and difficult. The third is that compensation is tied directly to performance and the performance of the NY judiciary has evidenced significant decline over the past decade. None of these conditions hold. The NY State judiciary handles significantly more cases per capita than numerous court systems in the country. Rather than declining over the past decade, the work of the judiciary has intensified. New York is not ranked 50th with respect to support of the legislative and executive branches of state government. In fact, mean compensation for those in the legislative and executive branches of our government is above that of many states.

As Chief Administrative Judge Pfau's Submission makes clear, the position of the judiciary in New York is unique and disturbing. It is my opinion that it is also potentially threatening to the integrity of one of our central branches of government.

As the Submission makes clear, the situation we find ourselves in today is of recent origin. Thirteen years ago (in 1999) compensation for NY judges – across a variety of metrics, from comparison to Federal judges to comparison to judges in other States – was aligned. Within the judicial branch, judges earned more than their senior clerks. Today, many clerks earn more than the judges they work for, and on all reasonable metrics, NY State judges are compensated significantly less than their peers in other states or in the Federal Government. Today, depending on the specific comparison used, our judges earn from 22 to 52% less than their peers. This situation has arisen for a very simple reason. In the Federal system and across all other States, judges have received salary increases that at a minimum have been designed to keep up with inflation. In contrast, New York judges have not. Their compensation has been frozen at levels that were equitable in 1999. The compensation of their peers has changed to reflect increases in the cost of living. This has created an inequitable situation.

There are a number of separate issues that require redress. I consider each below.

First, as noted earlier, while one State does need to rank last in commitment to the judiciary, if that ranking does not arise from legitimate sources, it signifies to the public that we hold our judiciary to be of lesser value than the other branches of government. Such differential valuation threatens the integrity of our system of checks and balances.

Second, reduced compensation relative to peers threatens the functioning of an organization. In the short term, highly effective organizations are able to sustain commitment, identity and morale in the wake of such challenges. This is the case with the judicial system in New York today. There is little empirical indication that NY is losing judges to other occupations, that judges are returning poorer decisions, or that citizens with the appropriate qualifications are no longer seeking positions in the judiciary. However, uneven compensation systems create structural cleavages and fault-lines in organizations that are very difficult to observe, especially if those

organizations are highly functioning and such cleavages may yield significant challenges in the future. By analogy, structural engineers are often unable to identify hidden fault-lines in critical structures (for example, the I-35W bridge across the Mississippi River bridge in Minneapolis that collapsed on August 1 2007, until such fault-lines express themselves in catastrophic failure. The absence of empirical indicators of stress provides no guarantee that latent stresses will not express themselves.

Third, issues of equity in comparison to peers are critically important when the resources at stake are distributed in an unfair manner. Here I distinguish between considerations of the equity with respect to the absolute amount of value (in this case, compensation) that is at stake, and considerations of equity with respect to the procedures by which these values are distributed. When those procedures are unfair, we violate one of our most important normative principles. As described in your report, the judges of NY have been subject to an unfair process for the past thirteen years. This process has resulted in inequities in absolute terms, but it is the process that is most challenging to the health of the judicial branch.

Redress thus requires the institutionalization of a fair process. Such a process is reflected in guarantees for cost-of-living increases once balance to the 1999 baseline (where equity was defined and thus established) is achieved.

No state would like to be thought of as the State that values its judges the least. It is sad that New York has allowed short-term exigencies to create a situation in which such an inference would be warranted. Likewise, every State has a constitutional obligation to secure the highest functioning of all three equal branches of government. Failure to secure the environment for such functioning risks unanticipated crisis and is contrary to the guidance that animated the design of our constitution. Finally, procedural justice in the distribution of resources to members of our society whose contributions are marked is an important foundation for beliefs in the fairness of systems. When such systems are subject to exogenous pressures arising from political winds, we risk creating enduring inequalities.

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Education

1982 – 1985 Ph.D. in Sociology, Harvard University
1980 – 1982 MA in Sociology, Harvard University
1974 – 1978 BA in Sociology, Magna Cum Laude, Brown University

Positions and Employment

1986 – 1991	Assistant Professor of Sociology, University of North Carolina, Chapel Hill
1991 – 1996	Associate Professor of Sociology, University of North Carolina, Chapel Hill
1996 – 1997	Professor of Sociology, University of North Carolina, Chapel Hill
2002 – 2003	Visiting Professor of Sociology, DISPOS, University of Genova
1998 –	Director, Paul F. Lazarsfeld Center for the Social Sciences
1998 – 2008	Professor of Sociology, Columbia University
2007 –	External faculty, Nuffield College, Oxford
2008 –	Jonathan Cole Professor of the Social Sciences, Columbia University
2000 – 2008; 2011 –	Director, Institute for Social and Economic Research and Policy, Columbia University

Books

1. Neckerman, Kathryn, Peter Bearman, and Lesley Wright (eds). After Tobacco: Assessing the Impact of Tobacco Control Policy. Columbia University Press. 2011: New York.

2. Hedstrom, Peter and Peter Bearman (eds). Handbook of Analytical Sociology. Oxford University Press. 2009: Oxford and New York.

3. Bearman, Peter. Doormen. University of Chicago Press. 2005: Chicago, Ill.

4. Bearman, Peter. Relations into Rhetorics: Local Elite Social Structure in Norfolk, England: 1540-1640. Rutgers University Press. American Sociological Association, Rose Monograph Series. New Brunswick NJ.

Selected Peer-reviewed Publications (in chronological order, selected from 69 publications)

1. Stovel, Katherine W, Michael Savage and Peter S. Bearman. "Ascription into Achievement: Models of Career Systems at Lloyds Bank, 1890-1970." *American Journal of Sociology*. 1996: 102:358-399.

2. Resnick, Michael D, Peter S. Bearman, and Robert Wm. Blum et al. "Protecting Adolescents from Harm: Findings from the National Longitudinal Study on Adolescent Health." *Journal of the American Medical Association*. 1997: 9: 10:832-84

3. Bearman, Peter. "Generalized Exchange." *American Journal of Sociology*. 1997: 102.5:1383-1415.

4. Kim, Hyojoung and Peter S. Bearman. "Who Counts in Collective Action? The Structure and Dynamics of Movement Participation." *American Sociological Review*. 1997: 62:70-93.

5. Bearman, Peter S. and Hannah Brückner. "Promising the Future: Virginity Pledges and the Transition to First Intercourse." *American Journal of Sociology*. 2001: 106: 4: 859-912.

6. Bearman, Peter S, and James Moody. "Suicide and Friendships among American Adolescents".

American Journal of Public Health. 2004: 94: 1: 89-96.

7. Bearman, Peter S, James Moody and Katherine Stovel. "Chains of Affection: The Structure of Adolescent Romantic and Sexual Networks". *American Journal of Sociology*. 2004: 110: 44-91

8. Brückner, Hannah and Peter S. Bearman. "After the Promise: The STD Consequences of Adolescent Virginity Pledges". *Journal of Adolescent Health*. 2005: 36: *271-278*

9. Erickson, Emily and Peter S. Bearman. Emily Erickson and Peter Bearman. "Malfeasance and the Foundations for Global Trade: The Structure of English Trade in the East Indies, 1601-1833." *American Journal of Sociology* 2006*:* 112:195-230

10. Baldassarri, Delia and Peter S. Bearman. 'Dynamics of Political Polarization'. *American Sociological Review*. 2007: 72: 784-811.

11. King, Marissa and Peter Bearman. "Diagnostic Change and Increased Prevalence of Autism". *International Journal of Epidemiology*. 2009: 38: 5:1224-1234

12. King, Marissa, Diana Dakhallalah, Christine Fountain, and Peter Bearman. "Estimated Autism Risk and Older Reproductive Age". *American Journal of Public Health*. 2009: 99: 9: 1673-1679

13. Liu, Ka-Yuet, Marissa King and Peter S. Bearman. "Social Influence and the Autism Epidemic". *American Journal of Sociology*. 2010: 115: 5: 1387-1434

14. Liu, Ka-Yuet, Noam Zerubavel, and Peter S. Bearman. "Demographic Change and the Increasing Prevalence of Autism". *Demography*. 2010: 47: 2: 327-343.

15. Shwed, Uri and Peter S. Bearman. "The Temporal Structure of Scientific Consensus Formation". *American Sociological Review*. 2010: 75: 6: 817-840.

16. Cheslack-Postava, Keely; Ka-Yuet Liu, and Peter S. Bearman. "Closely Spaced Pregnancies are Associated with Increased Odds of Autism in Sibling Births". *Pediatrics*. 2011: 127: 2

Selected Ongoing Research Support

National Institute for Health Director's Pioneer Award 9/30/07-7/31/12
Social Determinants of the Autism Epidemic
This study seeks to identify the determinants of increased prevalence of autism. Peter Bearman serves as the Principal Investigator.

National Institute for Health 9/20/10-9/19/11
Patterns of Psychotropic Utilization in the United States, 2004-2008
This study investigates the dynamics of psychotropic drug use in the US. Peter Bearman serves as the Principal Investigator.

Robert Wood Johnson Foundation 9/1/02-8/31/11
Health and Societies Scholars Program
This is a training project to direct a post-doctoral training program in Population Health. Peter Bearman serves as the co-director of the program.

Mellon Foundation 1/1/07-6/30/13
Mellon Interdisciplinary Graduate Fellows Program
The graduate fellows program provides advanced doctoral students in the social sciences and related fields at Columbia with an intellectual and material environment for completing high-quality dissertations. Peter Bearman serves as the Principal Investigator.

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APPENDIX D

Summary of Qualifications, Terms of Office and Jurisdiction
of New York's State-Paid Trial Court Judges and Justices

Qualifications, Terms and Jurisdiction of New York's State-paid Trial Court Judges and Justices

Supreme Court

Qualifications for Office: Must be a member of the New York bar for at least ten years.

Selection and Term: Elected Judicial District-wide for 14 year terms.

Jurisdiction: General original jurisdiction in law and equity.

Court of Claims

Qualifications for Office: Must be a member of the New York bar for at least ten years.

Selection and Term: Appointed by the Governor, with the advice and consent of the State Senate, for nine-year terms.

Jurisdiction: Jurisdiction to hear and determine claims against the State or by the State against the claimant or between conflicting claimants as the Legislature may provide.

Note: A majority of the State's Court of Claims Judges do not actually sit in the Court of Claims. Instead, they are temporarily assigned as Acting Supreme Court Justices, in which role they preside over cases in Supreme Court.

County Court

Qualifications for Office: Must be a member of the New York bar for at least five years.

Selection and Term: Elected county-wide in counties outside New York City for ten-year terms.

Jurisdiction: Jurisdiction over civil actions involving claims not exceeding $25,000 and over all crimes and other violations of law. Also, jurisdiction over landlord-tenant proceedings.

Note: There are no County Courts in New York City. In most counties outside the City, the County Court is the primary criminal court, presiding over felonies. This is in contrast with practice in New York City, which has no County Court and in which Supreme Court hears all felony cases.

Family Court

Qualifications for Office: Must be a member of the New York bar for at least ten years.

Selection and Term: Elected county-wide in counties outside New York City for ten-year terms; appointed by the New York City Mayor city-wide in the City for ten-year terms.

Jurisdiction: Jurisdiction over an array of proceedings regarding juveniles, custody of children, adoption, support of dependents, paternity, and domestic violence proceedings; and over certain proceedings upon a Supreme Court referral, including *habeas corpus* proceedings re: child custody, and applications to fix or modify support/custody, or to enforce judgments and orders of support/custody.

Surrogate's Court

Qualifications for Office: Must be a member of the New York bar for at least ten years.

Selection and Term: Elected county-wide in counties outside New York City for ten-year terms; elected county-wide in counties in New York City for 14-year terms.

Jurisdiction: Jurisdiction over all actions and proceedings relating to the affairs of decedents, probate of wills and administration of estates, guardianship of minors' property and other proceedings as provided by law.

New York City Civil Court

Qualifications for Office: Must be a member of the New York bar for at least ten years.

Selection and Term: Elected from districts in New York City fixed by statute for ten-year terms.

Jurisdiction: Jurisdiction over civil actions involving claims not exceeding $25,000. Also, jurisdiction over landlord-tenant proceedings.

Note: As with the State's Court of Claims Judges, many Civil Court Judges do not actually sit in the Court in which they were chosen to serve. Instead, they are temporarily assigned as Acting Supreme Court Justices, in which role they preside over cases in Supreme Court.

New York City Civil Court (Housing Part Judges)

Qualifications for Office: Must be a member of the New York bar for at least five years.

Selection and Term: Appointed by the Chief Administrative Judge from a list of persons selected as qualified by the Advisory Council for the Housing Part for five-year terms.

Jurisdiction: Jurisdiction over landlord-tenant proceedings.

New York City Criminal Court

Qualifications for Office: Must be a member of the New York bar for at least ten years.

Selection and Term: Appointed by the New York City Mayor city-wide in the City for ten-year terms.

Jurisdiction: Jurisdiction over misdemeanors and other offenses.

Note: As with the State's Court of Claims Judges and Civil Court Judges, many Criminal Court Judges do not actually sit in the Court in which they were chosen to serve. Instead, they are temporarily assigned as Acting Supreme Court Justices, in which role they preside over cases in Supreme Court.

District Court

Qualifications for Office: Must be a member of the New York bar for at least five years.

Selection and Term: Elected district-wide in districts established by the Legislature for six-year terms.

Jurisdiction: Jurisdiction over civil actions involving claims not exceeding $15,000. Also, jurisdiction over misdemeanors and other offenses.

City Courts Outside New York City

Qualifications for Office: Must be a member of the New York bar for at least five years.

Selection and Term: Elected or appointed (by mayor or council) city-wide for ten-year terms (six-year terms, if part-time).

Jurisdiction: Jurisdiction over civil actions involving claims not exceeding $15,000. Also, jurisdiction over misdemeanors and other offenses.

Note: City Court judges may either be full-time or part-time. Of the 170 such judges, 118 are full-time and 52 are part-time. There are 61 City Courts across the State and the 52 part-time judges serve in the Courts established for the smallest of these cities.

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APPENDIX E

Chart of Judicial Salaries by Court, Effective April 1, 2014

Court	April 1, 2012	April 1, 2013	April 1, 2014
Court of Appeals			
Chief Judge:	$182,600	$190,600	$198,600
Associate Judge:	$177,000	$184,800	$192,500
Appellate Division			
Presiding Justice:	$172,800	$180,400	$187,900
Associate Justice:	$168,600	$176,000	$183,300
Appellate Term			
Presiding Justice:	$167,100	$174,400	$181,700
Associate Justice:	$163,600	$170,700	$177,900
Administrative Judges			
Dep. CAJ (NYC):	$168,600	$176,000	$183,300
Dep. CAJ (outside NYC):	$168,600	$176,000	$183,300
AJ (in NYC; Jud. Dist.; county):	$165,700	$172,900	$180,200
Supreme Court			
Justice:	$160,000	$167,000	$174,000
Court of Claims			
Presiding Judge:	$168,600	$176,000	$183,300
Judge:	$160,000	$167,000	$174,000
County Court			
Earning $136,700 on 3/31/12:	$160,000	$167,000	$174,000
Earning $131,400 on 3/31/12:	$153,800	$160,600	$167,300
Earning $127,000 on 3/31/12:	$148,700	$155,200	$161,700
Earning $125,600 on 3/31/12:	$147,100	$153,500	$159,900
Earning $122,700 on 3/31/12:	$143,700	$149,900	$156,200
Earning $121,200 on 3/31/12:	$141,900	$148,100	$154,300
Earning $119,800 on 3/31/12:	$140,300	$146,400	$152,500
Family Court			
Earning $136,700 on 3/31/12:	$160,000	$167,000	$174,000
Earning $127,000 on 3/31/12:	$148,700	$155,200	$161,700
Earning $125,600 on 3/31/12:	$147,100	$153,500	$159,900
Earning $119,800 on 3/31/12:	$140,300	$146,400	$152,500
Surrogate's Court			
Earning $136,700 on 3/31/12:	$160,000	$167,000	$174,000
Earning $135,800 on 3/31/12:	$159,000	$166,000	$172,900
Earning $129,900 on 3/31/12:	$152,100	$158,700	$165,400
Earning $125,600 on 3/31/12:	$147,100	$153,500	$159,900
Earning $121,200 on 3/31/12:	$141,900	$148,100	$154,300
Earning $119,800 on 3/31/12:	$140,300	$146,400	$152,500
Civil Court of NYC and Criminal Court of NYC			
Judge of the Civil Court:	$147,100	$153,500	$159,900
Housing Judge of the Civil Court:	$135,100	$141,000	$146,900
Judge of the Criminal Court:	$147,100	$153,500	$159,900

District Court			
Pres., Bd. Of Judges (Nassau):	$148,600	$155,100	$161,600
Judge (Nassau):	$143,700	$149,900	$156,200
Pres., Bd. Of Judges (Suffolk):	$148,600	$155,100	$161,600
Judge (Suffolk):	$143,700	$149,900	$156,200
City Courts outside NYC			
Earning $119,500 on 3/31/12:	$139,900	$146,000	$152,200
Earning $118,300 on 3/31/12:	$138,500	$144,600	$150,600
Earning $116,800 on 3/31/12:	$136,800	$142,700	$148,700
Earning $115,100 on 3/31/12:	$134,800	$140,700	$146,600
Earning $113,900 on 3/31/12:	$133,400	$139,200	$145,000
Earning $108,800 on 3/31/12:	$127,400	$133,000	$138,500
Earning $81,600 on 3/31/12:	$95,600	$99,700	$103,900
Earning $54,400 on 3/31/12:	$63,700	$66,500	$69,300
Earning $27,200 on 3/31/12:	$31,900	$33,300	$34,700

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APPENDIX F

Beer v. United States, 696 F.3d 1174 (Fed. Cir. 2010).

U.S.A., Inc. v. Standard Register Co., 229 F.3d 1091 (Fed.Cir.2000), for the proposition that the spread from 85% to 90% is too great to be an equivalent. Pozen appreciates the force of those cases, but argues they are inapplicable here because the District Court did not answer the numeric equivalence question but instead turned the infringement decision on a flawed layer equivalence notion.

In my view, the District Court erred by not asking itself if under claim 2 a layer, viewed from the outside or from the inside, can be equivalent if is numerically nonequivalent. It cannot. The majority states that "a reasonable person could determine that a tablet layer with 85% of the agent is within the scope of the doctrine of equivalents." Respectfully, I disagree.

Peter H. BEER, Terry J. Hatter, Jr., Richard A. Paez, Laurence H. Silberman, A. Wallace Tashima and U.W. Clemon, Plaintiffs–Appellants,

v.

UNITED STATES, Defendant–Appellee.

No. 2010–5012.

United States Court of Appeals, Federal Circuit.

Oct. 5, 2012.

Background: Federal judges filed suit against United States, seeking backpay and declaratory relief from legislation that blocked five years of cost-of-living adjustments (COLAs), established by Ethics Reform Act (ERA), as allegedly unconstitutional deprivation of judicial compensation in violation of Compensation Clause. The United States Court of Federal Claims, Robert H. Hodges, Senior Judge, dismissed the complaint. On appeal, United States Court of Appeals for the Federal Circuit, 361 Fed.Appx. 150, summarily affirmed the judgment. Thereafter, the United States Supreme Court, —— U.S. ——, 131 S.Ct. 2865, 180 L.Ed.2d 909, granted a subsequent petition for certiorari, vacated the judgment, remanded the case. Upon remand, the Court of Appeals, 671 F.3d 1299, unanimously concluded that judges were not precluded from bringing their Compensation Clause claims.

Holdings: After granting judges' petition for rehearing en banc, 468 Fed.Appx. 995, the Court of Appeals, Rader, Chief Judge, held that:

(1) legislation that blocked five years of COLAs for judges constituted an unconstitutional deprivation of judicial compensation in violation of Compensation Clause; overruling *Williams v. United States*, 240 F.3d 1019, and

(2) a 2001 amendment to part of an appropriations act passed in 1981, which barred judges from receiving additional compensation except as Congress specifically authorized in legislation postdating appropriations bill, did not override the provisions of 1989 ERA promising judges COLAs.

Overruled-in-part, vacated-in-part, and remanded.

Dyk, Circuit Judge, filed dissenting opinion in which Bryson, Circuit Judge, joined.

O'Malley, Circuit Judge, filed concurring opinion in which Mayer and Linn, Circuit Judges, joined.

Wallach, Circuit Judge, filed concurring opinion.

1. Federal Courts ⚿763.1

Court of Appeals reviews Court of Federal Claims' dismissal of complaint

without deference. 28 U.S.C.A. § 1295(a)(3).

2. Judges ⚿42, 49(1)

Judges should disqualify themselves when their impartiality might reasonably be questioned or when they have a potential financial stake in the outcome of a decision. 28 U.S.C.A. § 455(a).

3. Judges ⚿39

Under rule of necessity, Court of Appeals would rule on federal judges' appeal from dismissal of their suit against United States, seeking backpay and declaratory relief from legislation that blocked five years of cost-of-living adjustments (COLAs), established by Ethics Reform Act (ERA), as allegedly unconstitutional deprivation of judicial compensation in violation of Compensation Clause. U.S.C.A. Const. Art. 3, § 1 et seq.; 5 U.S.C.A. § 5303(b).

4. Judges ⚿22(7)

Cost-of-living adjustments (COLAs) established by Ethics Reform Act (ERA) triggered Article III Compensation Clause's basic expectations and protections, thereby preventing Congress from abrogating ERA's precise and definite commitment to automatic yearly cost of living adjustments for sitting members of the judiciary; thus, legislation that blocked five years of COLAs for Article III judges constituted an unconstitutional deprivation of judicial compensation in violation of Compensation Clause; overruling *Williams v. United States*, 240 F.3d 1019. U.S.C.A. Const. Art. 3, § 1 et seq.; 5 U.S.C.A. § 5303(b).

5. Judges ⚿22(7)

Dual purpose of the Compensation Clause of Article III protects not only judicial compensation that has already taken effect but also reasonable expectations of maintenance of that compensation level. U.S.C.A. Const. Art. 3, § 1 et seq.

6. Judges ⚿22(7)

A 2001 amendment to part of an appropriations act passed in 1981, which barred judges from receiving additional compensation except as Congress specifically authorized in legislation postdating appropriations bill, did not override the provisions of 1989 Ethics Reform Act (ERA) promising judges cost-of-living adjustments (COLAs); appropriations act expired by its terms in 1982, and the later-enacted 1989 ERA "specifically authorized" 2007 and 2010 COLAs which occurred under its precise terms, and thus controlled over 1981 act. 5 U.S.C.A. § 5301.

7. Federal Courts ⚿1107

Statute of limitations did not bar federal judges' claims to recover cost-of-living adjustments (COLAs) established by Ethics Reform Act (ERA), but diminished by Congress in 1995, 1996, 1997, and 1999, and withheld in 2007 and 2010 based on an erroneous statutory interpretation; claims were "continuing claims" to monetary damages for the diminished amounts they would have been paid if Congress had not withheld the salary adjustments mandated by the Act. 28 U.S.C.A. § 2501.

Christopher Landau, Kirkland & Ellis, LLP, of Washington, DC, argued for plaintiffs-appellants. With him on the brief were John C. O'Quinn and K. Winn Allen.

Brian M. Simkin, Assistant Director, Commercial Litigation Branch, Civil Division, United States Department of Justice, of Washington, DC, argued for defendant-appellee. With him on the brief were Stuart F. Delery, Acting Assistant Attorney General, Jeanne E. Davidson, Di-

rector, and Michael S. Macko, Trial Attorney.

Jeffrey A. Lamken, MoloLamken LLP, of Washington, DC, for amicus curiae, The Federal Judges Association. With him on the brief were Martin V. Totaro and Lucas M. Walker.

Aaron M. Panner, Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C., of Washington, DC, for amicus curiae, International Municipal Lawyers Association.

William P. Atkins, Pillsbury Winthrop Shaw Pittman, LLP, of McLean, VA, for amicus curiae, Bar Association of the District of Columbia. Of counsel was Erin M. Dunston, Buchanan Ingersoll & Rooney P.C., of Alexandria, VA.

Lawrence D. Rosenberg, Jones Day, of Washington, DC, for amicus curiae, American Bar Association.

Carter G. Phillips, Sidley Austin, LLP, of Washington, DC, for amicus curiae, Federal Circuit Bar Association. With him on the brief was Rebecca K. Wood.

Lawrence M. Friedman, Barnes, Richardson & Colburn, Of Chicago, Illinois, for amicus curiae, Customs and International Trade Bar Association.

Before RADER, Chief Judge, NEWMAN, MAYER [1], LOURIE, BRYSON, LINN, DYK, PROST, MOORE, O'MALLEY, REYNA, and WALLACH, Circuit Judges.

Opinion for the court filed by Chief Judge RADER, in which Circuit Judges NEWMAN, MAYER, LOURIE, LINN, PROST, MOORE, O'MALLEY, REYNA and WALLACH join.

Dissenting opinion filed by Circuit Judge DYK, in which Circuit Judge BRYSON joins.

Concurring opinion filed by Circuit Judge O'MALLEY, in which Circuit Judges MAYER and LINN join.

Concurring opinion filed by Circuit Judge WALLACH.

RADER, Chief Judge.

The Constitution erects our government on three foundational corner stones—one of which is an independent judiciary. The foundation of that judicial independence is, in turn, a constitutional protection for judicial compensation. The framers of the Constitution protected judicial compensation from political processes because "a power over a man's subsistence amounts to a power over his will." The Federalist No. 79, p. 472 (Alexander Hamilton) (Clinton Rossiter ed., 1961). Thus, the Constitution provides that "Compensation" for federal judges "shall not be diminished during their Continuance in Office." U.S. Const. art. III, § 1 ("Compensation Clause").

This case presents this court with two issues involving judicial independence and constitutional compensation protections—one old and one new. First, the old question: does the Compensation Clause of Article III of the Constitution prohibit Congress from withholding the cost of living adjustments for Article III judges provided for in the Ethics Reform Act of 1989 ("1989 Act")? To answer this question, this court revisits the Supreme Court's decision in *United States v. Will*, 449 U.S. 200, 101 S.Ct. 471, 66 L.Ed.2d 392 (1980). Over a decade ago in *Williams v. United States*, 240 F.3d 1019 (Fed.Cir.2001) (filed with dissenting opinion by Plager, J.), a divided panel of this court found that *Will* applied to the 1989 Act and concluded that Congress could withdraw the promised 1989 cost of living adjustments. This court en banc now overrules *Williams* and

1. Judge Mayer participated in the decision on panel rehearing.

instead determines that the 1989 Act triggered the Compensation Clause's basic expectations and protections. In the unique context of the 1989 Act, the Constitution prevents Congress from abrogating that statute's precise and definite commitment to automatic yearly cost of living adjustments for sitting members of the judiciary.

The new issue involves pure statutory interpretation, namely, whether the 2001 amendment to Section 140 of Pub. L. No. 97–92 overrides the provisions of the 1989 Act. This court concludes the 1989 Act was enacted after Section 140, and as such, the 1989 Act's automatic cost of living adjustments control.

I.

The 1989 Act overhauled compensation and ethics rules for all three branches of government. With respect to the judiciary, it contained two reciprocal provisions. On the one hand, the 1989 Act limited a federal judge's ability to earn outside income and restricted the receipt of honoraria. On the other hand, the 1989 Act provided for self-executing and non-discretionary cost of living adjustments ("COLA") to protect and maintain a judge's real salary.

The 1989 Act provides that whenever a COLA for General Schedule federal employees takes effect under 5 U.S.C. § 5303, the salary of judges "shall be adjusted" based on "the most recent percentage change in the [Employment Cost Index] ... as determined under section 704(a)(1) of the Ethics Reform Act of 1989." Pub. L. No. 101–194, § 704(a)(2)(A), 103 Stat. 1716, 1769 (Nov. 30, 1989). The Employment Cost Index ("ECI") is an index of wages and salaries for private industry workers published quarterly by the Bureau of Labor Statistics. Section 704(a)(1) of the 1989 Act calculates COLAs by first determining the percent change in the ECI over the previous year. *Id.* at § 704(a)(1)(B). Next, the statutory formula reduces the ECI percentage change by "one-half of 1 percent ... rounded to the nearest one-tenth of 1 percent." *Id.* However, no percentage change determined under Section 704(a)(1) shall be "less than zero" or "greater than 5 percent." *Id.*

While the 1989 Act states that judicial salary maintenance would only occur in concert with COLAs for General Schedule federal employees under 5 U.S.C. § 5303, these General Schedule COLAs are automatic, i.e., they do not require any further congressional action. *See* 5 U.S.C. § 5303(a). The only limitation on General Schedule COLAs is a presidential declaration of a "national emergency or serious economic conditions affecting the general welfare" making pay adjustments "inappropriate." 5 U.S.C. § 5303(b).

Notwithstanding the precise, automatic formula in the 1989 Act, the Legislative branch withheld from the Judicial branch those promised salary adjustments in fiscal years 1995, 1996, 1997, and 1999. During these years, General Schedule federal employees received the adjustments under Section 5303(a), but Congress blocked the adjustments for federal judges. *See* Pub. L. No. 103–329, § 630(a)(2), 108 Stat. 2382, 2424 (Sept. 30, 1994) (FY 1995); Pub. L. No. 104–52, § 633, 109 Stat. 468, 507 (Nov. 19, 1995) (FY 1996); Pub. L. No. 104–208, § 637, 110 Stat. 3009, 3009–364 (Sept. 30, 1996) (FY 1997); Pub. L. No. 105–277, § 621, 112 Stat. 2681, 2681–518 (Oct. 21, 1998) (FY 1999).

In response to these missed adjustments, several federal judges filed a class action alleging these acts diminished their compensation in violation of Article III. After certifying a class of all federal judges serving at the time (including appellants) and without providing notice or

opt-out rights, the district court held that Congress violated the Compensation Clause by blocking the salary adjustments. *See Beer v. United States,* 671 F.3d 1299, 1308–09 (Fed.Cir.2012); *Williams v. United States,* 48 F.Supp.2d 52 (D.D.C.1999).

On appeal, this court reversed the district court's judgment. *See Williams,* 240 F.3d at 1019. This court opined that the Supreme Court's decision in *Will* foreclosed the judges' claim as a matter of law. *Id.* at 1033, 1035, 1040. According to this court, *Will* ruled that promised future salary adjustments do not qualify as "Compensation" protected under the Constitution until they are "due and payable." *Id.* at 1032 (quoting *Will,* 449 U.S. at 228, 101 S.Ct. 471). Thus, Congress enjoyed full discretion to revoke any future judicial COLAs previously established by law, no matter how precise or definite, as long as the adjustments had not yet taken effect. *Id.* at 1039. This court declined to hear the case en banc over the dissent of three judges. *See* 264 F.3d 1089, 1090–93 (Fed. Cir.2001) (Mayer, C.J., joined by Newman and Rader, JJ.); *id.* at 1093–94 (Newman, J., joined by Mayer, C.J. and Rader, J.). The Supreme Court denied certiorari over the dissent of three Justices. *See* 535 U.S. 911, 122 S.Ct. 1221, 152 L.Ed.2d 153 (2002) (Breyer, J., joined by Scalia and Kennedy, JJ., dissenting from denial of certiorari).

Following this court's decision in *Williams,* Congress amended a 1981 appropriations rider commonly known as Section 140. Section 140 originally read:

> Notwithstanding any other provision of law or of this joint resolution, none of the funds appropriated by this joint resolution or by any other Act shall be obligated or expended to increase, after the date of enactment of this joint resolution, any salary of any Federal judge or Justice of the Supreme Court, except as may be specifically authorized by Act of Congress *hereafter enacted:* Provided, That nothing in this limitation shall be construed to reduce any salary which may be in effect at the time of enactment of this joint resolution nor shall this limitation be construed in any manner to reduce the salary of any Federal judge or of any Justice of the Supreme Court.

Pub. L. No. 97–92, § 140, 95 Stat. 1183, 1200 (1981) (codified at 28 U.S.C. § 461 note) (emphasis added). While Section 140 originally expired in 1982, *see Williams,* 240 F.3d at 1026–27, it was revived by a 2001 amendment that added: "This section shall apply to fiscal year 1981 and each fiscal year thereafter." Pub. L. No. 107–77, § 625, 115 Stat. 748, 803 (Nov. 28, 2001).

Following the Section 140 amendment, Congress enacted legislation specifically allowing federal judges to receive the salary adjustments mandated by the 1989 Act in fiscal years 2002, 2003, 2004, 2005, 2006, 2008, and 2009. *See* Barbara L. Schwemle, Congressional Research Service, *Legislative, Executive, and Judicial Officials: Process for Adjusting Pay and Current Salaries* 2–4 (Feb. 9, 2011). For fiscal years 2007 and 2010, all General Schedule and Executive level federal employees received COLAs under 5 U.S.C. § 5303(a), but federal judges received no adjustments. Congress did not affirmatively authorize judicial COLAs in those years and took the position that, because of the requirements of Section 140, judicial COLAs could not be funded."

The current case results from the combination of the blocking legislation of the 1990s and the amendment to Section 140. Appellants are six current and former Article III judges, all of whom entered into federal judicial service before 2001. In January 2009, they filed a complaint in the United States Court of Federal Claims

claiming that Congress violated the Compensation Clause by withholding the salary adjustments established by the 1989 Act. They claimed a deficit resulted not only from the withholding of COLAs in 2007 and 2010, but also the calculation of adjustments due in other years by reference to base compensation that did not include the amounts withheld in 1995, 1996, 1997, and 1999. For relief, they sought back pay for the additional amounts they allegedly should have received during the period covered by the applicable six-year statute of limitations.

The Court of Federal Claims dismissed the complaint based on the *Williams* precedent. On appeal, this court summarily affirmed the judgment, stating that "*Williams* controls the disposition of this matter." *Beer v. United States*, 361 Fed. Appx. 150, 151–52 (Fed.Cir.2010).

The Supreme Court granted the subsequent petition for certiorari, vacated the judgment, remanded the case for "consideration of the question of preclusion," and stated that "further proceedings ... are for the Court of Appeals to determine." *Beer v. United States*, —— U.S. ——, 131 S.Ct. 2865, 180 L.Ed.2d 909 (2011). Specifically, in opposing the petition for certiorari, the Government had argued that Appellants could not litigate anew the issue resolved in *Williams* because they had been absent members of the class action in *Williams*.

Upon remand, this court unanimously concluded that Appellants were not precluded from bringing their Compensation Clause claims in the present case. *Beer v. United States*, 671 F.3d 1299, 1309 (Fed. Cir.2012). The district court in *Williams* had not provided Appellants with notice of the class certification. Thus they were not bound by the result of that earlier litigation. *See id.* at 1305–09. This court nonetheless continued to feel constrained by the ultimate conclusion in *Williams* and affirmed the Court of Federal Claims' dismissal of the complaint. *Id.* at 1309. Subsequently, this court granted Appellants' petition for rehearing en banc. 468 Fed. Appx. 995 (Fed.Cir.2012).

II.

[1] This court has jurisdiction over the Court of Federal Claims' dismissal of the Appellants' complaint under 28 U.S.C. § 1295(a)(3). This court reviews the decision to dismiss the complaint without deference. *Hearts Bluff Game Ranch, Inc. v. United States*, 669 F.3d 1326, 1328 (Fed. Cir.2012); *Frazer v. United States*, 288 F.3d 1347, 1351 (Fed.Cir.2002).

[2, 3] This court en banc now turns its attention to two preliminary issues before addressing the merits of the appeal. First, judicial review of laws affecting judicial compensation is not done lightly as these cases implicate a conflict of interest. *Will*, 449 U.S. at 211–17, 101 S.Ct. 471. After all, judges should disqualify themselves when their impartiality might reasonably be questioned or when they have a potential financial stake in the outcome of a decision. *See* 28 U.S.C. § 455(a). In *Will*, the Supreme Court applied the time-honored "Rule of Necessity" because if every potentially conflicted judge were disqualified, then plaintiffs would be left without a tribunal to address their claims. *See Will*, 449 U.S. at 213–17, 101 S.Ct. 471. The Rule of Necessity states that "although a judge had better not, if it can be avoided, take part in the decision of a case in which he has any personal interest, yet he not only may but *must* do so if the case cannot be heard otherwise." *Id.* at 213, 101 S.Ct. 471 (quoting F. Pollack, A First Book of Jurisprudence 270 (6th ed. 1929)) (emphasis added). This court relies on the Supreme Court's complete analysis of the Rule of Necessity and concludes that this

en banc court may, indeed must, hear the case. *See id.* at 211–18, 101 S.Ct. 471.

On the other preliminary procedural question, this court deliberately limits the questions under review. To be specific, this court en banc does not overrule the *Williams* panel's analysis of Section 140. *See* 240 F.3d at 1026–27. Furthermore, it does not overrule the *Beer* panel's analysis of preclusion. *See* 671 F.3d 1299. This court adopts the prior panel's analysis of the preclusion issue *in toto.* Now the court en banc proceeds to the old and new questions previously set forth.

III.

At the outset, this court must honor and address the Supreme Court's decision in *Will.* As the *Williams* panel correctly noted, if *Will* resolves the validity of Congress' decision to block the COLAs promised in the 1989 Act, then any remedy for salary diminution in this case lies not in this court but in the Supreme Court. *See Williams,* 240 F.3d at 1035. However, if *Will* is inapplicable to the statutory scheme at play in this case, then this court has an obligation to resolve the issue.

United States v. Will, supra, tested the validity of congressional blocking acts preventing COLAs provided for under the 1975 Adjustment Act ("1975 Act"). The 1975 Act purported to protect judicial salaries with adjustments calculated under an opaque and indefinite process. Section 5305, as in effect in 1975, directed the President to "carry out the policy stated in section 5301" when giving COLAs to General Schedule federal employees. 5 U.S.C. § 5305(a) (1976). Section 5301 in turn articulated a four-fold policy for setting federal pay: (1) equal pay for equal work; (2) pay distinction based on work and performance distinctions; (3) comparable pay with private sector jobs for comparable work; and (4) interrelated statutory pay levels. 5 U.S.C. § 5301(a) (1976).

In furtherance of this policy, the President appointed an agent to prepare an annual report on federal salaries. 5 U.S.C. § 5305(a)(1) (1976). This annual report relied on statistics from the Bureau of Labor Statistics on private sector pay, views of the "Federal Employees Pay Council" about the comparability of private and public sector pay systems, and the views of employee organizations not represented in the Council. 5 U.S.C. § 5305(a)(1) (1976). This report did not and could not mandate the award of COLAs.

The President also received a report from "The Advisory Committee on Federal Pay." 5 U.S.C. § 5305(a)(2) (1976). This committee reviewed the report issued by the President's agent under section 5305(a)(1) and considered further views and recommendations provided by "employee organizations, the President's agent, other officials of the Government of the United States, and such experts as it may consult." 5 U.S.C. § 5306(a)-(b) (1976).

Based on these reports, the President could provide COLAs to General Schedule federal employees. 5 U.S.C. § 5305(a)(2). If the President decided to recommend an adjustment, he would transmit to Congress the overall adjustment percentage. 5 U.S.C. § 5305(a)(3). Any judicial COLAs were pegged to the "overall percentage" in the President's report to Congress under section 5305. 28 U.S.C. § 461 (1976).

Despite the 1975 Act, Congress allowed several COLAs for General Schedule federal employees but denied the increases to judges and other senior officials. The Supreme Court discussed the details of the legislation that blocked these increases. *See Will,* 449 U.S. at 205–09, 101 S.Ct. 471. In 1978, a group of federal judges filed suit

alleging this blocking legislation was an unconstitutional diminution in salary contrary to Article III. Once the case made its way to the Supreme Court, the Court considered "when, if ever, ... the Compensation Clause prohibit[s] the Congress from repealing salary increases that otherwise take effect automatically pursuant to a formula previously enacted." *Id.* at 221, 101 S.Ct. 471. The Court concluded that Congress could block COLAs due to judges so long as the blocking legislation took effect in the fiscal year prior to the year in which the increase would have become payable. *Id.* at 228–29, 101 S.Ct. 471. According to the Court, "a salary increase 'vests' ... only when it takes effect as part of the compensation due and payable to Article III judges." *Id.* at 229, 101 S.Ct. 471.

[4] The 1989 Act, informed by the failures of the 1975 Act's procedure, adopted a different purpose, used a different structure, and created different expectations than the 1975 Act. The 1975 Act "involved a set of interlocking statutes which, in respect to future cost-of-living adjustments, were neither definite nor precise." *Williams,* 535 U.S. at 917, 122 S.Ct. 1221 (Breyer, J., joined by Scalia and Kennedy, JJ., dissenting from denial of certiorari). Instead of being tied to the percent change in a known, published metric of inflation such as the Employment Cost Index, the adjustments under the 1975 Act depended on the discretionary decisions of the President's agent and the Advisory Committee on Federal Pay. Furthermore, the President was not obligated to award adjustments to General Schedule employees on a specific timeline or even pursuant to the suggestions from the agent and the committee. Rather, he only did so if it furthered the policies underpinning federal pay articulated in 5 U.S.C. § 5301. Thus, the method for calculating COLAs under the 1975 Act was "imprecise as to amount and uncertain as to effect." *Id.*

By contrast, the 1989 Act promised a mechanical implementation of COLAs for judges under the following equation:

$$Adjustment\ Year\ N = \left(\frac{(ECI\ Year\ N_{-1}) - (ECI\ Year\ N_{-2})}{ECI\ Year\ N_{-2}} \right) \times (100) \times (0.995)$$

See Pub. L. No. 101–194, § 704(a)(1)(B), 103 Stat. 1716, 1769 (Nov. 30, 1989). The Act contained only two limits: a presidential prohibition (due to national emergency or extreme economic circumstances) and a ceiling (of no more than five percent). *Id.*

In essence, the statutes reviewed in *Will* required judicial divination to predict a COLA and prevented the creation of firm expectations that judges would in fact receive any inflation-compensating adjustment. In that context, as the Supreme Court noted, no adjustment vested until formally enacted and received. However, the statutes reviewed in *Williams* and in this case provide COLAs according to a mechanical, automatic process that creates expectation and reliance when read in light of the Compensation Clause. Indeed a prospective judicial nominee in 1989 might well have decided to forego a lucrative legal career, based, in part, on the promise that the new adjustment scheme would preserve the real value of judicial compensation.

Aside from their respective differences in methods for calculating COLAs, the 1989 Act's overall scope and legislative history distinguishes it from the statutory scheme addressed in *Will.* In fact, the automaticity of the 1989 Act's COLAs takes on heightened significance in light of

the broader statutory scheme because the 1989 Act also banned judges from earning outside income and honoraria. *See Brown v. Gardner,* 513 U.S. 115, 118, 115 S.Ct. 552, 130 L.Ed.2d 462 (1994) ("The meaning of statutory language, plain or not, depends on its context."). In sum, the salary protections in the 1989 Act are only part of a comprehensive codification of ethical rules, Pub. L. No. 101–194 §§ 301–03, financial reporting requirements, *id.* at § 202, work rules for senior judges, *id.* at § 705, and—perhaps most important—prohibitions on outside income and honoraria, *id.* at § 601.

Of the 935 active and senior judges in 1987, four hundred reported earning outside income from teaching law, speaking fees, and other sources. 135 Cong. Rec. S29,693 (daily ed. Nov. 17, 1989). More than half reported extra earnings from $16,624 to $39,500. *Id.* The Report by The Bipartisan Task Force on Ethics, which became the basis for the Ethics Reform Act of 1989, noted that the repeated failure to provide recommended salary increases for judges and other executive employees meant increased reliance on "earning honoraria as a supplement to their official salaries." 135 Cong. Rec. H30,744 (daily ed. Nov. 21, 1989) (Task Force Report). During consideration of the 1989 Act, Congress acknowledged that denying access to outside income would amount to a "pay cut." 135 Cong. Rec. S29,662 (daily ed. Nov. 17, 1989) (statement of Sen. Dole that removing outside income is a "pay cut"); *see also* 135 Cong. Rec. H29,488 (daily ed. Nov. 16, 1989) (statement of Rep. Fazio), H29,492 (daily ed. Nov. 16, 1989) (statement of Rep. Ford). In that context, reliance on the 1989 Act's compensation maintenance formula took on added significance. *See* 135 Cong. Rec. H29,503 (daily ed. Nov. 16, 1989) (statement of Rep. Wolpe) ("[The] pay adjustment provision [is] tied directly to the elimination of all honoraria or speaking fees."). Indeed, the Task Force Report emphasized that the restrictions and limitations on outside earned income, honoraria, and employment made by the Act are conditional on the enactment of the increased pay provisions. 135 Cong. Rec. H30,745 (daily ed. Nov. 21, 1989) (Task Force Report).

The dependable COLA system became "a final important part" of the package designed to remove salaries "from their current vulnerability for political demagoguery." 135 Cong. Rec. H29,483 (Nov. 16, 1989) (statement of Rep. Fazio); H30,753 (Nov. 21, 1989) (Task Force Report). In sum, the 1989 Act reduced judges' income by banning outside income but promised in exchange automatic maintenance of compensation—a classic legislative *quid pro quo.* 135 Cong. Rec. H29,484 (Nov. 16, 1989) (statement of Rep. Martin stating that the Ethics Reform Act of 1989 is a comprehensive and interrelated package); *cf.* 135 Cong. Rec. H29,499 (Nov. 16, 1989) (statement of Rep. Crane objecting to the interrelated nature of the package and advocating separate bills for ethics and pay).

Thus, the 1989 statutory scheme was a precise legislative bargain which gave judges "an employment expectation" at a certain salary level. *Cf. United States v. Hatter,* 532 U.S. 557, 585, 121 S.Ct. 1782, 149 L.Ed.2d 820 (2001) (Scalia, J., concurring in part and dissenting in part) (arguing that the repeal of judges' exception from Medicare tax constituted a diminishment in compensation because judges had an expectation of an exemption from this tax). Moreover, the 1989 Act COLA provisions were not an increase in judicial pay. If so, the connection with the vesting rule for pay increases articulated in *Will* might be a closer issue. Rather, the statute ensured that real judicial salary would

not be reduced in the face of the elimination of outside income and the operation of inflation. *See Williams,* 535 U.S. at 916, 122 S.Ct. 1221 (Breyer, J., joined by Scalia and Kennedy, JJ., dissenting from denial of certiorari).

The vesting rules considered in *Will* are not expressly limited to the 1975 Act. However, the Supreme Court had no occasion to draw a distinction between a discretionary COLA scheme and a self-executing, non-discretionary adjustment for inflation coupled with a reduction in judicial compensation via elimination of outside income. For this reason, therefore, this court must examine further the actual differences in the two statutory schemes.

The Supreme Court described the adjustments under the 1975 Act as "automatic." *See Will,* 449 U.S. at 203, 223–24, 101 S.Ct. 471. An examination of the 1975 Act, however, shows that the adjustments at issue in *Will* were automatically operative only "*once the Executive had determined the amount.*" *Id.* at 203, 101 S.Ct. 471 (emphasis added). The ways that the Executive determined the amounts under the 1975 Act and the 1989 Act are very different. The former was an uncertain, discretionary process. The latter is precise and definite.

While the Supreme Court described the COLAs in *Will* as "automatic," the only aspect that was truly automatic was the link between judicial and General Schedule employee salaries. Whether General Schedule employees (and judges) would receive COLAs in any given year or whether those COLAs would maintain earning levels was anything but certain under the 1975 Act. Consequently, the only line the Supreme Court could draw in *Will* was between before and after the COLAs at issue were funded. The 1989 Act's scheme presents a much different landscape than the Court confronted in *Will.* For these reasons, *Will* does not foreclose the relief that the judges seek.

Although this court determines that *Williams* incorrectly applied *Will* and other aspects of the law, this determination does not end the inquiry. The court must now examine whether Congress' decisions to deny the promised COLAs actually violated the Compensation Clause in Article III of the Constitution.

The Compensation Clause has two basic purposes. First, it promotes judicial independence by protecting judges from diminishment in their salary by the other branches of Government. The founders of this nation understood the connections amongst protections for Life, Liberty, and the Pursuit of Happiness, protections for judicial independence, and protections for judicial compensation. Listed among the colonists' grievances with the English Crown was that the King "ha[d] made Judges dependent on his Will alone for the Tenure of their Offices, and the amount and payment of their salaries." Decl. of Independence para. 11 (U.S. 1776). As explained in The Federalist Papers, "[n]ext to permanency in office, nothing can contribute more to the independence of the judges than a fixed provision for their support." The Federalist No. 79, p. 472 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

During the Constitutional Convention in 1787, the inspired draftsmen set out to protect against abuses such as those enumerated in the Declaration of Independence. James Madison of Virginia proposed prohibiting both enhancement and reduction of salary lest judges defer unduly to Congress when that body considered pay increases. *Will,* 449 U.S. at 219–20, 101 S.Ct. 471. Madison urged that variations in the value of money could be "guarded agst. by taking for a standard wheat or some other thing of permanent

value." *Id.* at 220, 101 S.Ct. 471 (quoting 2 M. Farrand, The Records of the Federal Convention of 1787, p. 45 (1911)). The Convention rejected Madison's proposal because any commodity chosen as a standard for judicial compensation could also lose value due to inflationary forces, i.e., the value of wheat could also fluctuate. *Id.* Thus, the Compensation Clause did not tie judicial salaries to any commodity. The framers instead acknowledged that "fluctuations in the value of money, and in the state of society, rendered a fixed rate of compensation [for judges] in the Constitution inadmissible." The Federalist No. 79, *supra.* The Convention adopted the clause in its current form while voicing, at length, concerns to protect judicial compensation against economic fluctuation and reprisal.

The Compensation Clause, as well as promoting judicial independence, "ensures a prospective judge that, in abandoning private practice—more often than not more lucrative than the bench—the compensation of the new post will not diminish." *Will,* 449 U.S. at 221, 101 S.Ct. 471. This expectancy interest attracts able lawyers to the bench and enhances the quality of justice. *Id.* This expectancy interest does not encompass increases in future salary but contemplates maintenance of that real salary level. *Williams,* 535 U.S. at 916, 122 S.Ct. 1221 (Breyer, J. joined by Scalia and Kennedy, JJ., dissenting from denial of certiorari); The Federalist No. 79, *supra,* (noting that an Article III judge is assured "of the ground upon which he stands" and that he should "never be deterred from his duty by the apprehension of being placed in a less eligible situation").

[5] The dual purpose of the Compensation Clause protects not only judicial compensation that has already taken effect but also reasonable expectations of maintenance of that compensation level. *See Williams,* 535 U.S. at 916, 122 S.Ct. 1221 (Breyer, J. joined by Scalia and Kennedy, JJ., dissenting from denial of certiorari). The 1989 Act promised, in precise and definite terms, salary maintenance in exchange for prohibitions on a judge's ability to earn outside income. The 1989 Act set a clear formula for calculation and implementation of those maintaining adjustments. Thus, all sitting federal judges are entitled to expect that their real salary will not diminish due to inflation or the action or inaction of the other branches of Government. The judicial officer should enjoy the freedom to render decisions—sometimes unpopular decisions—without fear that his or her livelihood will be subject to political forces or reprisal from other branches of government.

Prospective judges should likewise enjoy the same expectation of independence and protection. A lawyer making a decision to leave private practice to accept a nomination to the federal bench should be entitled to rely on the promise in the Constitution and the 1989 Act that the real value of judicial pay will not be diminished. *Will,* 449 U.S. at 220–21, 101 S.Ct. 471; *cf. United States v. Winstar Corp.,* 518 U.S. 839, 872, 116 S.Ct. 2432, 135 L.Ed.2d 964 (1996) (recognizing that government promises may give rise to reasonable expectations).

To be sure, the Compensation Clause does not require periodic increases in judicial salaries to offset inflation or any other economic forces. As noted before, the Constitutional Convention did not tie judicial salaries to a commodity or other standard of measurement. *Will,* 449 U.S. at 220, 101 S.Ct. 471. However, when Congress promised protection against diminishment in real pay in a definite manner and prohibited judges from earning outside income and honoraria to supplement

their compensation, that Act triggered the expectation-related protections of the Compensation Clause for all sitting judges. A later Congress could not renege on that commitment without diminishing judicial compensation. That those compensation adjustments would happen in the future does not eliminate the reasonableness of the expectations created by the protections in the 1989 Act. Expectancy is, by its very nature, concerned with future events.

Congress committed to providing sitting and prospective judges with annual COLAs in exchange for limiting their ability to seek outside income and to offset the effects of inflation. This decision furthered the Founders' intention of protecting judges against future changes in the economy. Instead of fixing compensation relative to a commodity subject to inflationary pressure, Congress pegged the adjustment to a known measure of change to the economy as a whole, thus protecting the real salary of judges from both inflation and from fickle political will. By enacting blocking legislation in 1995, 1996, 1997, and 1999, Congress broke this commitment and effected a diminution in judicial compensation.

Congress is not precluded from amending the 1989 Act. Congress may set up a scheme promising judges a certain pay scale or yearly cost of living increases. However, the Constitution limits those changes. If a future Congress wishes to undo those promises, it may, but only prospectively. Any restructuring of compensation maintenance promises cannot affect currently-sitting Article III judges.

IV.

[6] Turning now to the second question, this court determines that the 2001 amendment to Section 140 of Pub. L. 97–92 has no effect on the compensation due to judges. Unlike the preceding discussion of the Compensation Clause, this is a question of statutory interpretation. Without a statutory basis for withholding the COLAs, federal judges should have received the adjustments in 2007 and 2010. These adjustments are payable to the judges regardless of constitutional protections. Congress simply had no statutory authority to deny them.

As noted above, Section 140 was part of an appropriations bill passed in 1981. It barred judges from receiving additional compensation except as Congress specifically authorized in legislation postdating Section 140. *See* Pub. L. No. 97–92, § 140, 95 Stat. 1183, 1200 (Dec. 15, 1981). The appropriations act containing Section 140 expired by its terms on September 30, 1982. *See Williams,* 240 F.3d at 1026. Thus, the rule that judicial pay adjustments had to be "specifically authorized by Act of Congress hereafter enacted" expired in 1982.

Of course, in 2001, Congress amended Section 140, purporting to apply it "to fiscal year 1981 and each fiscal year thereafter." Pub. L. No. 107–77, Title VI, § 625, 115 Stat. 748, 803 (2001). Notably, Congress chose 1981 as the effective date for this extension of Section 140. As shown above, Congress did not explicitly authorize judicial compensation adjustments in 2007 and 2010. If Section 140 applied to bar those 2007 and 2010 adjustments, the absence of that additional Act of Congress would block—solely on the basis of this statute—any adjustments in those years.

Section 140, however, by its own terms, did not block the 2007 and 2010 adjustments. Section 140 is straightforward: it bars judicial salary increases unless (1) "specifically authorized by Act of Congress" and (2) "hereafter enacted." Pub. L. No. 97–92, § 140. The 1989 Act's pre-

cise and definite promise of COLAs clearly satisfies the first requirement to avoid a Section 140 bar. *Williams,* 240 F.3d at 1027. The 1989 Act "specifically authorized" the 2007 and 2010 adjustments which occurred under its precise terms.

Section 140 was enacted in 1981 and the 1989 Act occurred eight years later. Thus, the 1989 Act was "hereafter enacted" within Section 140's meaning. When Congress amended Section 140 in 2001, it did not wipe the slate clean and set a new benchmark for the "hereafter enacted" requirement. The 2001 amendment makes no reference to its own November 28, 2001, enactment date. Instead, the amendment reiterates the 1981 baseline found elsewhere in the original Section 140, making the provision applicable to " 'fiscal year 1981 and each fiscal year thereafter.' " Pub. L. No. 107–77. An amendment referring only to fiscal year 1981 cannot redefine "hereafter" to refer to an entirely different date two decades later. Thus, the "hereafter enacted" requirement remained unchanged setting the "hereafter enacted" trigger date as 1981. In other words, Congress amended the existing Section 140 in 2001, but Section 140 remained a part of the Public Law 97–92 enacted in 1981.

Furthermore, the amendment did not change Section 140's enactment date. Indeed the Government agreed at oral argument before this court en banc that the 2001 amendment did not change the "hereafter enacted" clause of Section 140. The 2001 amendment merely erased Section 140's expiration date, making permanent whatever effect the provision had when originally enacted. Congress thus expunged this court's holding in *Williams* that Section 140 expired in 1982. The 2001 amendment, however, did not change Section 140's substantive scope.

The 1989 Act's precise, automatic COLAs satisfy the requirements of Section 140 because it was enacted after Section 140. The Government withheld COLAs from judges in 2007 and 2010 solely because the government misinterpreted Section 140 as requiring a separate and additional authorizing enactment to put those adjustments into effect. By its own terms, Section 140 did not require that further authorizing legislation because it permitted COLAs under the "hereafter enacted" 1989 Act.

V.

In this case, Congress' acts in 1995, 1996, 1997, and 1999 constitute unconstitutional diminishments of judicial compensation. Additionally, statutorily promised cost of living adjustments were withheld in 2007 and 2010 based on an erroneous statutory interpretation. Appellants' motion to amend their complaint to include a challenge to the 2010 withholdings is granted. *See Mills v. Maine,* 118 F.3d 37, 53 (1st Cir.1997) ("[A]ppellate courts have authority to allow amendments to complaints because '[t]here is in the nature of appellate jurisdiction, nothing which forbids the granting of amendments.' ") (quoting *Newman–Green, Inc. v. Alfonzo–Larrain,* 490 U.S. 826, 834, 109 S.Ct. 2218, 104 L.Ed.2d 893 (1989) (alterations omitted)).

[7] The statute of limitations does not bar these claims because, as established in *Friedman v. United States,* 159 Ct.Cl. 1, 7, 310 F.2d 381 (1962) and *Hatter v. United States,* 203 F.3d 795, 799–800 (Fed.Cir. 2000), *aff'd in part, rev'd in part on other grounds,* 532 U.S. 557, 121 S.Ct. 1782, 149 L.Ed.2d 820 (2001), the claims are "continuing claims." As relief, appellants are entitled to monetary damages for the diminished amounts they would have been paid if Congress had not withheld the salary adjustments mandated by the Act. On

remand, the Court of Federal Claims shall calculate these damages as the additional compensation to which appellants were entitled since January 13, 2003—the maximum period for which they can seek relief under the applicable statute of limitations. In making this calculation, the Court of Federal Claims shall incorporate the base salary increases which should have occurred in prior years had all the adjustments mandated by the 1989 Act had actually been made. *See Hatter,* 203 F.3d 795 (applying the "continuing claim" doctrine to calculating wrongful withholding of judicial pay).

VI.

This court has an "obligation of zealous preservation of the fundamentals of the nation. The question is not how much strain the system can tolerate; our obligation is to deter potential inroads at their inception, for history shows the vulnerability of democratic institutions." *Beer v. United States,* 592 F.3d 1326, 1329 (Fed. Cir.2010) (Newman, J., dissenting from the denial of petition for hearing en banc). The judiciary, weakest of the three branches of government, must protect its independence and not place its will within the reach of political whim. The precise and definite promise of COLAs in the 1989 Act triggered the expectation-related protections of the Compensation Clause. As such, Congress could not block these adjustments once promised. The Court of Federal Claims' dismissal of Appellants' complaint is hereby reversed, and the case is remanded for further consideration in accordance with this opinion.

OVERRULED–IN–PART, VACATED–IN–PART, AND REMANDED

DYK, Circuit Judge, with whom BRYSON, Circuit Judge, joins, dissenting.

The majority opinion brings to mind an exchange between Learned Hand and Justice Holmes. Judge Hand enjoined Justice Holmes to "[d]o justice" on the bench, but the Justice demurred: "That is not my job. My job is to play the game according to the rules." Learned Hand, A Personal Confession, in *The Spirit of Liberty* 302, 306–07 (Irving Dilliard ed., 3d ed. 1960). If the Supreme Court must play by the rules, that duty must be doubly binding on subordinate federal courts. Fidelity to this principle mandates adherence to the Supreme Court's opinion in *United States v. Will,* 449 U.S. 200, 101 S.Ct. 471, 66 L.Ed.2d 392 (1980).

I

While the majority's approach has much to recommend it as a matter of justice to the nation's underpaid Article III judges, it has nothing to recommend it in terms of the rules governing adjudication. "The criterion of constitutionality is not whether we believe the law to be for the public good," *Adkins v. Children's Hosp.,* 261 U.S. 525, 570, 43 S.Ct. 394, 67 L.Ed. 785 (1923) (Holmes, J., dissenting), but whether the law comports with the Supreme Court's authoritative construction of the Constitution. Here, the issue is the scope of the Supreme Court's 1980 decision in *Will. Will* 's holding is squarely on point. The Supreme Court's framing of the issue was unmistakably clear: "when, if ever, does the Compensation Clause prohibit the Congress from repealing salary increases that otherwise take effect automatically pursuant to a formula previously enacted?" 449 U.S. at 221, 101 S.Ct. 471. The answer was that a future salary increase "becomes irreversible under the Compensation Clause" when it "vests," *id.,* and that it " 'vests' for purposes of the Compensation Clause only when it takes effect as part of the compensation due and payable to Article III judges," *id.* at 228–29,

101 S.Ct. 471. The Court's opinion in *Will* is unambiguous that the Court adopted what it has characterized as a "categorical" rule. *See, e.g., Plaut v. Spendthrift Farm, Inc.,* 514 U.S. 211, 239–40, 115 S.Ct. 1447, 131 L.Ed.2d 328 (1995).

The Court in *Will* explained that for two of the years,

> the statute was passed before the Adjustment Act increases had taken effect—before they had become a part of the compensation due Article III judges. Thus, the departure from the Adjustment Act policy in no sense diminished the compensation Article III judges were receiving; it refused only to apply a previously enacted formula.
>
> A paramount—indeed, an indispensable—ingredient of the concept of powers delegated to coequal branches is that each branch must recognize and respect the limits on its own authority and the boundaries of the authority delegated to the other branches. To say that the Congress could not alter a method of calculating salaries before it was executed would mean the Judicial Branch could command Congress to carry out an announced future intent as to a decision the Constitution vests exclusively in the Congress. We therefore conclude that a salary increase "vests" for purposes of the Compensation Clause only when it takes effect as part of the compensation due and payable to Article III judges.

449 U.S. at 228–29, 101 S.Ct. 471 (footnotes omitted).

Under *Will*'s bright-line vesting rule, Congress was free to "abandon" a statutory formula and revoke a planned cost-of-living adjustment ("COLA"), as long as the revoking legislation was enacted into law before the COLA "took effect," that is, became "due and payable" (i.e., before October 1, the first day of the next fiscal year). *Id.* at 227–29, 101 S.Ct. 471. In *Will* Years 1 and 4, Congress missed that deadline, and the Court held that the belated withdrawal of judges' COLAs violated the Compensation Clause. *Id.* at 226, 230, 101 S.Ct. 471. But in *Will* Years 2 and 3, COLA-blocking statutes signed before October 1 were upheld, even though one of those statutes eliminated the promised COLA just a day before it would have taken effect. *Id.* at 229, 101 S.Ct. 471.

Will thus made clear that a future salary increase only becomes protected by the Compensation Clause when it becomes "due and payable"; an increase which is merely anticipated or expected has not vested, and is not protected. By declining to follow *Will*'s clear vesting rule here, the majority also rejects the carefully crafted panel opinion in *Williams v. United States,* 240 F.3d 1019, 1039 (Fed.Cir.2001), *reh'g denied,* 240 F.3d 1366 (Fed.Cir.2001) (en banc), whose view of *Will* was supported at the time by a clear majority of the en banc court. *See Williams,* 240 F.3d at 1366 (eight judges concurring in the denial of rehearing en banc because "we are duty-bound to enforce [*Will*'s] rule. If we have incorrectly read the *Will* opinion, the Supreme Court will have the opportunity to correct the error.").

II

The majority attempts to redefine the constitutional test as turning not on "vesting," but on "reasonable expectations," a concept that appears nowhere in the *Will* opinion. To justify this shift, the majority seeks to distinguish *Will* on its facts, namely on the dubious ground that the "automatic" salary adjustment scheme in *Will* was different from the "automatic" salary adjustment scheme in place in *Williams* and here. But even if factual differences were pertinent (which, as we discuss below, could not support a depar-

ture from *Will*'s holding), there is no material difference between the statutes in *Will* and those in the *Williams* years (1995, 1996, 1997, and 1999). The *Will* statutes and the *Williams* statutes were not different insofar as they tied judicial compensation to General Schedule ("GS") compensation, nor were they materially different as far as the definiteness of the GS COLA was concerned. Contrary to the majority's suggestion, under both schemes, the COLA was "required" unless the President altered the COLA in response to "national emergency" or "economic conditions." *Compare* 5 U.S.C. § 5305(c)(1) (1976) *with* 5 U.S.C. at § 5303(b)(1) (2006). As the House Report to the 1990 Act stated, "[t]he President would have discretion [under the 1990 Comparability Act] to alter this adjustment.... This discretion is substantially similar to current law," i.e., the 1975 Act. H.R.Rep. No. 101–906, at 88 (1990).[1] And under both statutory schemes, the GS COLA, once established, would "take effect automatically." *Will*, 449 U.S. at 221, 101 S.Ct. 471.[2] Thus, the statutory schemes appear "strikingly similar" for all practical purposes. *Williams*, 240 F.3d at 1027.

Nevertheless, the majority asserts that the expectation of a COLA created by the *Williams* statutes was significantly more "precise and definite," Majority Op. 1183, because under *Will's* more complex scheme, there was greater discretion over the COLA—an assertion which is accurate only insofar as the President's agent and Advisory Committee had greater discretion in setting the *initial amount* of the GS COLA. Under each statutory scheme, the President's discretion was the same.[3]

But whatever the discretion, if the test were "reasonable expectations," then the key question would not be how the statutory scheme initially determined a COLA, but whether the amount of the COLA had become "precise and definite" at the time the blocking statute thwarted the judges' expectations. In this respect, *Will* cannot be distinguished from *Williams*. For *Will* Year 3, no "judicial divination," Majority Op. 1181, would have been required: a GS COLA of 5.5% had already been specified in the President's Alternative Plan, 14 Weekly Comp. Pres. Docs. 1480 (Aug. 31, 1978), which was adopted and transmitted to Congress by the President a month before the Year 3 blocking statute was enacted. *Will*, 449 U.S. at 229, 101 S.Ct. 471. The President had no further discretion to change the amount of the COLA. As the majority notes, "once the Executive had determined the amount," the adjustments in *Will* were automatically opera-

1. Plainly Congress saw the references in the 1975 Act to "economic conditions" and in the 1990 Act to "serious economic conditions" as functionally the same, since the President's discretion was to remain "substantially similar" under the 1990 Act as before.

2. Judge O'Malley's concurrence misreads the dissent in suggesting that we view the COLAs in *Will* as "automatic" only because "the statutory scheme had run its course" in the disputed years. Concur. Op. 1193.

3. *Will*'s statutory scheme

> required the President to appoint an adjustment agent [who] was to compare salaries in the civil service with those in the private sector and then recommend an adjustment to an Advisory Committee. Subsequently, the Committee would make its own recommendation to the President, accepting, rejecting, or modifying the agent's recommendation as the Committee thought desirable. The President would have to accept the Committee's recommendation—unless he determined that national emergency or special economic conditions warranted its rejection.

Williams v. United States, 535 U.S. 911, 917, 122 S.Ct. 1221, 152 L.Ed.2d 153 (2002) (Breyer, J., joined by Scalia & Kennedy, JJ., dissenting).

tive. Majority Op. 1183 (quoting *Will*, 449 U.S. at 203, 101 S.Ct. 471) (internal quotation marks omitted). In the *Williams* years, at the time the blocking statutes were enacted, the prospective amount of the GS COLA could be calculated based on the Employment Cost Index figures released by the Bureau of Labor Statistics, although the President generally did not announce a final amount until after the blocking statutes were enacted.[4] Thus, the COLA in *Will* Year 3 was just as "precise and definite" as the COLAs in the *Williams* years.

Of course, the COLAs remained uncertain in another respect: in both *Will* and *Williams*, the presumptive GS COLA could still be overridden by Congressional action, and in fact it was overridden for one of the *Williams* years.[5] Again, there is no meaningful difference between the situations in *Will* and *Williams*.[6] To summarize: in both *Will* Year 3 and in each of the *Williams* years, at the time the judges' COLA was blocked, the amount of the GS COLA had been established, the President retained no discretion to change the GS COLA, and the COLA would have taken effect automatically, absent Congressional intervention. The Supreme Court upheld the blocking statute in *Will* Year 3. 449 U.S. at 229, 101 S.Ct. 471. Yet the majority maintains that the blocking statutes in *Williams* offend the Constitution. This distinction is baffling.

Finally, the majority here suggests that *Will* is distinguishable because the statutes here (unlike the statutes in *Will*) imposed limits on the judges' outside income, without "an increase in judicial pay." Majority Op. 1182. But the majority can hardly make a credible claim that judges' outside compensation is protected by the Compensation Clause, and it follows that the reduction of outside compensation cannot create a Compensation Clause issue where none would otherwise exist.[7]

4. For all the *Williams* years, GS salary adjustment tables were promulgated by Executive Order in the preceding December. Exec. Order 12944, 60 Fed. Reg. 309 (Dec. 28, 1994); Exec. Order 12984, 61 Fed. Reg. 237 (Dec. 28, 1995); Exec. Order No. 13033, 61 Fed. Reg. 68987 (Dec. 27, 1996); Exec. Order No. 13106, 63 Fed. Reg. 68151 (Dec. 7, 1998). In each year, the judges' COLAs had been blocked several weeks to months earlier. *See* Pub. L. 103–329, Title VI, § 630(a)(2), 108 Stat. 2382, 2424 (1994); Pub. L. 104–52, Title VI, § 633, 109 Stat. 468, 507 (1995); Pub. L. 104–208, Title VI, § 637, 110 Stat. 3009–364 (1996); Pub. L. 105–277, Title VI, § 621, 112 Stat. 2681–518 (1998). For one of the *Williams* years, 1996, the President transmitted an Alternative Plan to Congress setting a 2% GS COLA before the blocking statute was passed. 31 Weekly Comp. Pres. Docs. 1466, 1466–67 (1995).

5. For 1995, Congress reduced the GS COLA to 2%. Pub. L. 103–329, Title VI, § 630(a)(1), 108 Stat. 2382, 2424 (1994). The projected GS COLA had been 2.6%. *See* Sharon S. Gressle, Cong. Research Serv., Order No. RS20278, Judicial Salary–Setting Policy 6 (March 6, 2003).

6. Under the *Will* scheme, in addition to enacting separate legislation, Congress could have disapproved the Alternative Plan by a one-house legislative veto. *Will*, 449 U.S. at 204, 101 S.Ct. 471. But a legislative veto would not have zeroed out the GS COLA; it would have reinstated the amount recommended to the President, *id.*, which was *higher* than the President's figure in *Will* Year 3. *See* 14 Weekly Comp. Pres. Docs. 1480 (Aug. 31, 1978). It is unclear how Congressional action to *increase* the GS COLA could have made the judges' expectations of a COLA in *Will* Year 3 less "precise and definite." The legislative veto was held unconstitutional after *Will* and before the *Williams* years. *INS v. Chadha*, 462 U.S. 919, 103 S.Ct. 2764, 77 L.Ed.2d 317 (1983).

7. In fact, the 1989 Act did increase judicial pay by 25%, thus offsetting the limitations on outside income. Pub. L. 101–194 § 703(a)(3), 103 Stat. 1716, 1768 (1989).

III

Even if the two statutory schemes were meaningfully different, and the *Williams* scheme created "reasonable judicial expectation[s] of future compensation" that did not exist in *Will*, Appellants' Br. 29–31, that would be quite beside the point. Neither counsel for the appellants nor the majority is able to explain how that difference authorizes this court to disregard *Will*'s clear vesting rule. The majority concedes that "the vesting rules considered in *Will* are not expressly limited to the 1975 Act." Majority Op. 1183. There is no basis for concluding that a "reasonable expectations" test has supplanted the *Will* vesting rule as the governing test. Certainly no decision of the Supreme Court has shifted the governing principle from vesting to reasonable expectations. There is not even a claim that subsequent decisions of the Court have somehow "undermine[d] the reasoning" of *Will*. *United States v. Hatter*, 532 U.S. 557, 571, 121 S.Ct. 1782, 149 L.Ed.2d 820 (2001) (quoting *Will*, 449 U.S. at 227 n. 31, 101 S.Ct. 471) (internal quotation marks omitted). And even if *Will* had been undermined, it would not be *this* court's prerogative to overrule it. *See id.* at 567, 121 S.Ct. 1782 (noting that because *Evans* had been undermined but not yet "expressly overrule[d]," the Federal Circuit "was correct in applying *Evans*" and thereby "invit[ing] us to reconsider" it).

So too our job is to follow the holding of *Will*, not to confine it to its facts. Numerous Supreme Court decisions, and our own decisions, have made this clear. As the Supreme Court held in *Thurston Motor Lines, Inc. v. Jordan K. Rand, Ltd.*, a Court of Appeals must not "confus[e] the factual contours of [Supreme Court precedent] for its unmistakable holding" in an effort to reach a "novel interpretation" of that precedent. 460 U.S. 533, 534–35, 103 S.Ct. 1343, 75 L.Ed.2d 260 (1983) (per curiam). *See also, e.g., Marmet Health Care Ctr., Inc. v. Brown*, —— U.S. ——, 132 S.Ct. 1201, 1202, 182 L.Ed.2d 42 (2012) (per curiam) (a state court "misread[ ] and disregard[ed] the precedents of this Court" when it held the Federal Arbitration Act's scope to be "more limited than mandated by this Court's previous cases"); *Ariad Pharms., Inc. v. Eli Lilly & Co.*, 598 F.3d 1336, 1347 (Fed.Cir.2010) (en banc) ("As a subordinate federal court, we may not so easily dismiss [the Supreme Court's] statements as dicta but are bound to follow them.").

The fact that three Justices of the Court, dissenting from a denial of certiorari, opined that *Will* might be distinguished from *Williams* is not authoritative. *See Williams*, 535 U.S. at 917, 122 S.Ct. 1221 (Breyer, J., joined by Scalia & Kennedy, JJ., dissenting). A dissent from a denial of certiorari cannot "destroy[ ] the precedential effect" of a prior opinion. *Teague v. Lane*, 489 U.S. 288, 296, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989). This court has recognized that neither the agreement of three dissenting Justices, nor the approval of their reasoning by concurring Justices in later cases, can "transform a dissent into controlling law." *Prometheus Labs., Inc. v. Mayo Collaborative Servs.*, 628 F.3d 1347, 1356 n. 2 (Fed.Cir.2010), *rev'd on other grounds, Mayo Collaborative Servs. v. Prometheus Labs., Inc.*, —— U.S. ——, 132 S.Ct. 1289, 182 L.Ed.2d 321 (2012).

In short, neither the dissent from denial of certiorari in *Williams* nor the Supreme Court's remand in this case can be read as an invitation for this court to perform reconstructive surgery on *Will*. The Supreme Court may distinguish its own opinions by limiting them to their facts, *see, e.g., Williams v. Illinois*, —— U.S. ——, 132 S.Ct. 2221, 2242 n. 13, 183 L.Ed.2d 89

(2012), or choose to overrule them, *see, e.g., Hatter*, 532 U.S. at 567, 121 S.Ct. 1782, but that is not an option for this court. We respectfully dissent.[8]

O'MALLEY, Circuit Judge, with whom MAYER and LINN, Circuit Judges, join, concurring.

I join the majority, both in the judgment it reaches and in its reasoning. I write separately to address two issues.

First, I write to explain why I believe that, if *United States v. Will*, 449 U.S. 200, 101 S.Ct. 471, 66 L.Ed.2d 392 (1980), must be read as broadly as the dissent and the *Williams v. United States*, 240 F.3d 1019 (Fed.Cir.2001) majority believes it must, then *Will* was wrong and the Supreme Court should say so. Second, I write because I believe that, whatever its current statutory reach, Section 140 is unconstitutional and Congress can no longer rely on it to stagnate judicial compensation.

I

I first turn to *Will*. I agree with the majority that *Will* did not reach the issue presented here and, thus, does not dictate the result we may reach today. The position taken by the dissent, and by the *Williams* majority before it, is not without some force, however. One cannot deny that the adjudicatory principles upon which they rely are important ones, even if the majority concludes they are not determinative here. If the dissent is correct that we are forced to glean sweeping Compensation Clause principles from *Will* governing all forms of statutory enactments designed to increase judicial pay, we must also be forced to conclude that *Will*'s analysis is flawed, both jurisprudentially and constitutionally.

A. Jurisprudentially

I find several aspects of the *Will* decision problematic. First, a close look at the facts and reasoning in *Will* reveals its internal inconsistency; neither its analysis nor its ultimate conclusion matches the facts presented. Specifically, while the Court in *Will* initially characterized the statutory scheme at issue there as "automatic," 449 U.S. at 223, 101 S.Ct. 471, it later justified its Compensation Clause holding by characterizing congressional action blocking salary increases under the scheme as merely modifying "the formula" by which "future" increases were to be calculated. *Id.* at 227–28, 101 S.Ct. 471. Next, if the language employed in *Will* is meant to set down a "vesting" principle applicable in all Compensation Clause challenges, I believe the Court both: (1) violated the long-standing principle that courts are to decide only the cases before them and must only reach constitutional issues if and to the extent necessary; and (2) landed upon a holding that, taken to its logical extreme, creates absurd results.

1. Use of the Term "Automatic"

As the majority notes, the statutory scheme at issue in *Will*—the Executive Salary Cost–of–Living Adjustment Act of 1975, Pub. L. 94–82, 89 Stat. 419 (Aug. 9, 1975) ("the Adjustment Act")—was a complex scheme, fraught with discretion and uncertainty. Despite this, *Will* characterized the Adjustment Act as a pay adjust-

8. Appellants also argue that the 2007 and 2010 COLAs were improperly withheld because no blocking legislation was enacted in those years, and Section 140, as amended in 2001, was either inapplicable or unconstitutionally discriminated against federal judges under the Supreme Court's decision in *Hatter*. While we agree that this issue is not resolved by *Will*, these statutory and constitutional arguments were not properly raised below, and we decline to address them here.

ment scheme which contemplated "automatic" pay increases. At issue in *Will* was the constitutionality of Congress's decision to enact statutes preventing high-level Executive, Legislative, and Judicial officials, including Article III judges, from receiving COLAs in four consecutive years where General Schedule federal employees received increases. The Court noted that these blocking statutes were designed to "stop or to reduce previously authorized cost-of-living increases initially intended to be *automatically* operative" under the Adjustment Act. *Will*, 449 U.S. at 203, 101 S.Ct. 471 (emphasis added). The Court then phrased the question presented in *Will* as: "when, if ever, does the Compensation Clause prohibit the Congress from repealing salary increases that otherwise take effect *automatically* pursuant to a formula previously enacted?" *Id.* at 221, 101 S.Ct. 471 (emphasis added).

As the majority notes, it is hard to understand the Court's use of the term automatic in the context of the Adjustment Act. Normally, to say something is "automatic" is to say it occurs involuntarily or without further debate. *See* Oxford English Dictionary def. A(1); A(7)(a) (3d ed. June 2011; online version June 2012); *see also* American Heritage Dictionary 121 (5th ed. 2011) (def. 2a: defining "automatic" as "[a]cting or done without volition or conscious control; involuntary"). Nothing about the judicial salary adjustments at issue in *Will* was "automatic," however.

To the contrary, the adjustments at issue in *Will* were based on civil service salary adjustments that were entirely discretionary. As explained by the majority, whether federal employees would receive a COLA, and in what amount, depended on the initial recommendations of an adjustment agent which were then subject to review by an Advisory Committee, the President, and Congress. This procedure hardly can be described as one that occurs involuntarily. In addition, the statutes setting forth future COLAs were "neither definite nor precise," and nothing provided that adjustments would be calculated "in a mechanical way." *Williams v. United States*, 535 U.S. 911, 917, 122 S.Ct. 1221, 152 L.Ed.2d 153 (2002) (Breyer, J., joined by Scalia and Kennedy, JJ., dissenting from denial of certiorari). Because the statutory scheme under the Adjustment Act "was imprecise as to amount and uncertain as to effect," the Court's characterization of the increases under the Adjustment Act as "automatic" is difficult to follow. *See id.*

The dissent explains the Court's mischaracterization of the Adjustment Act's pay scheme by noting that, for the years in question in *Will*, the statutory scheme had run its course and resulted in a recommended salary increase by the time Congress acted to block those increases. This, the dissent seems to suggest, explains why the Supreme Court used the term "automatic" to describe what was before it. While that argument has a certain logic to it, it does not explain why the Court's constitutional analysis focused on the *absence* of a guarantee under the Adjustment Act.

According to the Supreme Court, the Adjustment Act did not "alter the *compensation* of judges; it modified only the *formula* for determining that compensation." *Will*, 449 U.S. at 227, 101 S.Ct. 471 (emphases in original). And, the Court said that the blocking statutes merely represented a decision to "abandon" that "formula." It then admonished that, "[t]o say that the Congress could not alter a method of calculating salaries before it was executed would mean the Judicial Branch could command Congress to carry out an announced *future intent* as to a decision the Constitution vests exclusively in the Con-

gress." *Id.* at 228, 101 S.Ct. 471 (emphasis added). It was on this reasoning that the Court concluded that a salary increase does not "vest" for Compensation Clause purposes until it becomes part of a judge's compensation that is due and payable and that Congress had not violated the Compensation Clause when it did not allow certain increases under the Adjustment Act to "vest."

Thus, the Court explained its Compensation Clause decision in *Will* by saying it was only dealing with a formula regarding an expressed "future intent" to provide increases; the Court did not say at that point that it was addressing increases that had already been decided upon. More importantly, it did not say it was addressing definite increases that had been promised by operation of law; in explaining its assessment of the Act vis-à-vis the Compensation Clause, the Court spoke of the scheme under the Adjustment Act as one that promised no more than potential adjustments. And, in discussing the concept of vesting, the Court seemed to back away from the notion that it was dealing with anything one could consider "automatic" in the common sense of that word. How can an increase occur "automatically" if a right to it had not yet "vested"?

While I understand why the dissent believes we must assume the Supreme Court meant what it said when it described the Adjustment Act increases as "automatic" ones, that assumption would mean that the Court's description of the facts presented had little correlation with its reasoning for why those facts did not run afoul of the Compensation Clause.

2. Constitutional Avoidance

Next, if we read *Will* as broadly as *Williams* did, and the dissent now does, we must assume that, in *Will*, the Supreme Court violated its own well-established principle of constitutional avoidance. The Supreme Court has long-recognized that "[j]udging the constitutionality of an Act of Congress is 'the gravest and most delicate duty that this Court is called upon to perform.' " *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 130 S.Ct. 876, 917–18, 175 L.Ed.2d 753 (2010) (Roberts, C.J., concurring) (quoting *Blodgett v. Holden*, 275 U.S. 142, 147–48, 48 S.Ct. 105, 72 L.Ed. 206 (1927) (Holmes, J., concurring)). The Court's standard practice, therefore, has been to "refrain from addressing constitutional questions except when necessary to rule on particular claims before [it]." *Id.* at 918 (citing *Ashwander v. TVA*, 297 U.S. 288, 346–48, 56 S.Ct. 466, 80 L.Ed. 688 (1936) (Brandeis, J., concurring)). In furtherance of this practice, it has long been the rule that courts should "not 'formulate a rule of constitutional law broader than is required by the precise facts to which it is to be applied.' " *Ashwander*, 297 U.S. at 347, 56 S.Ct. 466 (quoting *Liverpool, New York & Philadelphia S.S. Co. v. Commissioners of Emigration*, 113 U.S. 33, 39, 5 S.Ct. 352, 28 L.Ed. 899 (1885)); *see also United States v. Raines*, 362 U.S. 17, 21, 80 S.Ct. 519, 4 L.Ed.2d 524 (1960) (same).

Applying this principle in *Citizens United*, Chief Justice Roberts explained that the Court's "standard practice of avoiding broad constitutional questions except when necessary" gives rise to an "order of operations," whereby the Court considers the narrowest claim first before proceeding, if necessary, to any broader claims. 130 S.Ct. at 918. Only if there is no valid narrow constitutional ground available, should the court resolve any broader constitutional question. *See id.*

If we assume that *Will* is to be read so broadly as to control the result under the very different set of facts presented here, we must also assume the Court spoke to a

question not before it. The constitutional question properly raised in *Will* was whether, under the specific statutory scheme set out in the Adjustment Act, the four blocking statutes at issue diminished judicial pay in violation of the Compensation Clause. A fair reading of *Will* based on "the precise facts to which it [was] applied," requires limiting the holding to the statutory scheme that was before the Court. *See Ashwander*, 297 U.S. at 347, 56 S.Ct. 466 (Brandeis, J., concurring) (citation omitted); *see also Raines*, 362 U.S. at 21, 80 S.Ct. 519. If *Will* is read to address a question broader than that presented—one that would govern a host of different congressional efforts to protect judicial pay from diminution in value—then we must conclude that, in *Will*, the Supreme Court ignored its own governing jurisprudential principles.

In its briefing, the government concedes that there was a narrower approach the Court could have taken. Specifically, the government argues that, "even if the Supreme Court in *Will* could have based its decision upon the 'discretionary' character of the then-applicable statutory scheme, the Court did not decide the case upon that ground. The Court drew no such distinction." Appellee's Br. 26–27. If the government is right on this point, it is the very reason why *Will* was wrong to make the pronouncements upon which the government now relies. If the Court in *Will* consciously chose not to draw a distinction between a discretionary COLA scheme and a self-executing, non-discretionary one, it: (1) formulated a rule of constitutional law broader than required by the facts presented; and (2) ignored the fundamental precept that judges decide only the cases before them. *See Hein v. Freedom from Religion Found., Inc.*, 551 U.S. 587, 615, 127 S.Ct. 2553, 168 L.Ed.2d 424 (2007) ("Relying on the provision of the Constitution that limits our role to resolving the 'Cases' and 'Controversies' before us, we decide only the case at hand.")

3. Absurd Results

Finally, the definition of "vesting" *Williams* gleaned from *Will* cannot be right. If it were: (1) Congress could do away with judicial retirement benefits for all sitting judges; (2) it would be inconsistent with the way the concept of vesting has been applied to similar pay increases for Members of Congress; and (3) it would run afoul of the common law understanding of the way in which future interests "vest" for all other purposes. It necessarily would lead to absurd results.

First, if the definition of "vesting" *Williams* felt bound to under *Will* is correct, then Congress could eliminate judicial retirement pay for all sitting Article III judges without violating the Compensation Clause. By statute, Article III judges can retire with full pay once they reach a certain combination of age plus years of judicial service. *See* 28 U.S.C. § 371. Under this system, the Supreme Court has said that the right to receive retirement pay "d[oes] not vest until retirement" and the "system provide[s] nothing for a judge who le[aves] office before age 65." *United States v. Hatter*, 532 U.S. 557, 575, 121 S.Ct. 1782, 149 L.Ed.2d 820 (2001). In other words, the Supreme Court has specifically held that retirement benefits do not vest until a judge retires and certain prerequisites are met.

In *Will*, the Court concluded that vesting occurs when a salary increase "takes effect as part of the compensation due and payable to Article III judges." 449 U.S. at 229, 101 S.Ct. 471. As such, for those years where the COLAs at issue in *Will* had not yet become "due and payable," the Court held that the blocking statutes did not violate the Compensation Clause's pro-

hibition against diminishing judicial pay. *See id.* If we accept *Will*'s holding that Congress can abolish judicial salary adjustments at any time before they take effect, it logically follows that Congress would also be free to abolish judicial retirement pay at any time. The practical consequences of *Will* would place judicial retirement benefits at risk, despite the fact that the Supreme Court itself previously has characterized such benefits as "compensation" under Article III. *See Hatter,* 532 U.S. at 574, 121 S.Ct. 1782 ("the noncontributory pension salary benefits [are] themselves part of the judge's compensation").

Second, *Will*'s definition of vesting conflicts with the way in which that concept has been applied in the context of the Twenty–Seventh Amendment. In *Boehner v. Anderson,* 30 F.3d 156 (D.C.Cir.1994), the court addressed whether the 1989 Act (which also applies to Members of Congress) was inconsistent with the Twenty–Seventh Amendment which provides that: "No law, varying the compensation for services of the Senators and Representatives, shall take effect until an election of Representatives shall have intervened." *Id.* at 159. The court held that the phrase "shall take effect" in the Amendment referred to the date the Ethics Reform Act first became operative—*i.e.,* 1991—rather than any earlier or later point in time. *See id.* at 161–62. Because the COLA provision of the Ethics Reform Act took effect in January 1991, after an intervening election in 1990, that provision did not violate the Twenty–Seventh Amendment. *Id.* at 162. The court also held that: (1) Congress is free to specify a formula for future and continuing salary increases; and (2) the COLAs under the 1989 Act were designated to occur automatically each year after 1991, with no additional law necessary. *Id.* at 162–63. All yearly COLAs beyond 1990 thus became operative and "vested" for Members of Congress when the law was first effective in 1991.[1]

In *Williams,* the appellee-judges relied on the holding in *Boehner* to contend that the COLA increases for judicial officers took effect, or vested, when the law was effective, not when the yearly COLAs became *due and payable. Williams,* 240 F.3d at 1036. This court recognized the holding in *Boehner,* but distinguished it on grounds that it dealt with a different question limited to Members of Congress. Specifically, the court found that *Boehner* "has no relevance ... to the question of whether the judicial pay aspects of the 1989 Act could, consistent with Article III, be revised or abrogated by later Acts of Congress." *Id.* at 1037. That question, the *Williams* court held, was already answered in the affirmative in *Will's* holding that "vesting, for federal judges under Article III, occurs only when compensation begins to accrue to the judges, not when a particular adjustment formula is enacted." *Id.* at 1036–37. By simply relying on *Will* to distinguish *Boehner,* the court in *Williams* avoided the more difficult task of trying to reconcile two contradictory approaches to what vesting means under the Constitution.

We are now faced with two distinct definitions of the constitutionally effective date of congressionally enacted COLAs. While *Will* provides that, for Article III purposes, a COLA is effective when it becomes "due and payable," regardless of

1. In the alternative, the appellant in *Boehner* argued that, if the court found the COLA provision vested and constitutional, then a later-enacted statute that cancelled a planned COLA absent an intervening election violated the Twenty–Seventh Amendment. 30 F.3d at 162. Although the answer to that question would be of interest to us now, the court declined to address it. *See id.* at 162–63.

when the law establishing that COLA was enacted or when it took effect, *Boehner* states that, for Article I and the Twenty–Seventh Amendment, a COLA vests when the law is first effective, even if not due and payable for years to come. Common sense and basic principles of interpretation counsel against drawing this distinction.

While it is certainly true that the operative date of congressionally designated salary increases is not prescribed in the Constitution, both the Compensation Clause and the Twenty–Seventh Amendment address the Framers' concerns with in-term salary changes for the respective branches of government—one with decreases in-term and the other with increases in-term. I see no reason why the concept of vesting should be employed in a way to expand Congress's ability to *decrease* judicial salaries under the Compensation Clause and be reframed under the Twenty–Seventh Amendment so as to expand Congress's ability to *increase* its own.

Finally, the vesting rule articulated in *Will* is an outlier. As this court in *Williams* correctly noted, "[t]ypically, 'vesting' of future interests only requires two components: an identification of the future owner, and certainty that the property would transfer." 240 F.3d at 1032 (citing 2 Blackstone Commentaries 168; Simes & Smith, *The Law of Future Interests,* § 65, pp. 54–55 (2nd ed. 1956)). This view of vesting of future interests is "more consistent with black-letter [law]." *See id.* at 1038. The Supreme Court, nevertheless, "departed from traditional vesting rules" for future interests and announced a peculiar "actual possession" rule for Article III. *Id.* at 1032. *Will* ignored the standard rule for vesting of future interests and created a unique rule solely for judicial compensation. *See id.* at 1038. Despite recognition of its illogic, the *Williams* panel felt compelled to reject the use of traditional vesting rules for Compensation Clause purposes because it found those rules to be "simply contrary to the rule established by the Supreme Court in *Will.*" *Id.* at 1033.[2]

If we are to believe that *Will* advanced such an extreme vesting rule—one applicable only to the Compensation Clause—then the Court should reexamine that rule and correct its mistake. Had the Supreme Court in *Will* applied the generally-accepted rule for vesting of future interests to the Adjustment Act, the same one the *Boehner* court applied to congressional pay increases, then a COLA whose formula was codified by law would vest, at an absolute minimum, once the amount of the COLA was established for a particular year. This approach is grounded in "sound equitable principle[s]" and, as we recognized in *Williams,* has deep common-law roots. *See id.* at 1032–33.

For the reasons explained in further detail below, as the majority has noted, a more reasonable, consistent, and logical definition of "vesting" under Article III should be governed by the "reasonable expectations" of sitting judicial officers.

2. Indeed, despite awareness of *Will,* various state courts interpreting analogous provisions of their own constitutions have held that the failure to provide statutorily promised COLAs unconstitutionally diminishes judicial compensation. *See e.g., Jorgensen v. Blagojevich,* 211 Ill.2d 286, 285 Ill.Dec. 165, 811 N.E.2d 652, 664 (2004) (noting that the standards for conferring and calculating COLAs, which ''were formulated following the United States Supreme Court's decision in *Will,* expressly provided that COLAs were to be given on July 1, 1991, and on July 1 of each year thereafter and that such COLAs were to be considered a component of salary fully vested at the time the Compensation Review Board's report became law''). *Will*'s ''vesting'' rule for Compensation Clause challenges—if that is really what it is—stands alone.

Put simply, if we are to read *Will* as broadly as *Williams* did, and the dissent now does, the Court should revisit *Will*'s unique vesting rule.

B. Constitutionally

If *Will* truly established an "actual possession" vesting rule for Compensation Clause purposes, that holding seems indefensible under the Constitution. The Framers formulated the Compensation Clause for the express purpose of maintaining judicial independence, in part by providing judges with reasonable expectations about their pay and the inability of Congress to reduce it. As interpreted in *Williams,* the *Will* rule defeats the Framers' intent and threatens the governmental structure around which the Constitution was formulated.

1. Historical Perspective and the Framers' Intent

The Compensation Clause "has its roots in the longstanding Anglo–American tradition of an independent Judiciary." *Will,* 449 U.S. at 217, 101 S.Ct. 471. As the Supreme Court has recognized, the "colonists had been subjected to judicial abuses at the hand of the Crown, and the Framers knew the main reasons why: because the King of Great Britain 'made Judges dependent on his Will alone, for the tenure of their offices, and the amount and payment of their salaries.' " *Stern v. Marshall,* —— U.S. ——, 131 S.Ct. 2594, 2609, 180 L.Ed.2d 475 (2011) (quoting the Declaration of Independence, para. 11). Against this backdrop, the Framers designed Article III to protect the public "from a repeat of those abuses." *Id.* By giving judges life tenure and preventing the other branches from reducing judicial compensation, the Framers sought to "preserve the integrity of judicial decisionmaking." *Id.*

As the majority notes, in Federalist 79, Alexander Hamilton emphasized the importance of protecting judicial compensation. Specifically, he argued that, "[n]ext to permanency in office, nothing can contribute more to the independence of the judges than a fixed provision for their support." The Federalist No. 79 at 385 (Alexander Hamilton) (Lawrence Goldman ed., 2008). Hamilton observed that, "[i]n the general course of human nature, *a power over a man's subsistence amounts to a power over his will.*" *Id.* at 386 (emphasis in original). For this reason, the legislative branch must not "change the condition[s] of the [judiciary] for the worse" so that "[a] man may then be sure of the ground upon which he stands, and can never be deterred from his duty by the apprehension of being placed in a less eligible situation." *Id.*

Hamilton's concerns, and those of many other Framers, were not merely academic. Indeed, throughout the former colonies, legislatures took retributive actions against judges with whom they disagreed, including attempts to remove judges who declared particular laws unconstitutional and to call judges before the legislature to answer for specific rulings. *See* Julius Goebel, Jr., *Antecedents and Beginnings to 1801, in* 1 History of the Supreme Court of the United States, 133–42 (Paul A. Freund ed., 1971). These events further supported the founders' desire to insulate judges from the influence and control of the other branches of government.

The Supreme Court has recognized that the primary purpose of the prohibition against reducing judicial salaries is "not to benefit the judges, but . . . to promote that independence of action and judgment which is essential to the maintenance of the guaranties, limitations, and pervading principles of the Constitution." *Evans v. Gore,* 253 U.S. 245, 253, 40 S.Ct. 550, 64

L.Ed. 887 (1920), *overruled on other grounds by Hatter*, 532 U.S. at 571, 121 S.Ct. 1782. The Compensation Clause should be "construed, not as a private grant, but as a limitation imposed in the public interest." *Id.* It is the public that benefits from a strong, independent judiciary that is free to issue decisions without fear of repercussion.

The Framers' desire to insulate judicial pay from the political process was the subject of much debate and angst. While, given the long tenure judges would be asked to serve, there was no doubt some provision should be made for salary increases, the Framers also feared that, if salary decisions were left entirely to Congress, the judiciary might be forced to curry favor with Congress to secure reasonable compensation increases. *See* Jonathan L. Entin & Erik M. Jensen, *Taxation, Compensation, and Judicial Independence*, 56 Case W. Res. L. Rev. 965, 972 (2006). To address this concern, James Madison suggested indexing judicial pay to the price of wheat or another stable value. The Framers rejected that idea, however, for fear fluctuations in commodity prices, like inflation, might leave judges undercompensated. *See* 2 *The Records of the Federal Convention of 1787* 44–45 (Max Farrand ed., 1911).

Thus, while the Framers foresaw a need for in-term increases in judicial salaries and were concerned with leaving the task of providing those increases to Congress, they saw no alternative; no self-executing system they could devise seemed adequate to ensure that, given the dual effects of inflation and rising standards of living, judges would not be left undercompensated. So trust Congress they did, leaving to it the responsibility to guard against real decreases in judicial salary by future legislative enactments.

In sum, the Framers intended to provide judges reasonable expectations about their pay. The Framers, to be sure, did not contemplate that a judges' reasonable expectation would mean that he or she would become wealthy by taking the bench, or that Congress necessarily would increase judicial salaries. They believed, however, that Congress would assess fairly and periodically the need for increases in judicial compensation, would provide increases when appropriate, and that, once it did so, judicial officers thereafter could rely on the fact that Congress could not take such increases away.

2. The Expectations Approach in Practice

Courts have long-endorsed this expectations-based approach to the Compensation Clause. Indeed, as Justice Breyer has noted, protecting "a judge's reasonable expectations" is the "basic purposive focus" of the Compensation Clause. *Williams*, 535 U.S. at 916, 122 S.Ct. 1221 (Breyer, J., joined by Scalia and Kennedy, JJ., dissenting from denial of certiorari). Likewise, Justice Scalia has argued that, when Congress takes away a previously-established component of the federal judicial "employment package," it reduces compensation and thereby thwarts judicial expectations. *See Hatter*, 532 U.S. at 585, 121 S.Ct. 1782 (Scalia, J., dissenting) (arguing that repeal of federal judges' exemption from the Medicare tax was a reduction of compensation because those judges "had an employment expectation of a preferential exemption from taxation"). Consistent with this expectations-related focus, the Supreme Court has held that the Compensation Clause forbids laws "which by their necessary operation and effect withhold or take from the judge a part of that which has been promised by law for his services." *O'Donoghue v. United States*, 289 U.S. 516, 533, 53 S.Ct. 740, 77 L.Ed. 1356 (1933)

(quoting *Evans v. Gore,* 253 U.S. 245, 254, 40 S.Ct. 550, 64 L.Ed. 887 (1920)).

Other courts likewise have emphasized judicial expectations in their approach to the Compensation Clause. For example, in the early nineteenth century, the Circuit Court for the District of Columbia held that, "if [a judge's] compensation has once been fixed by law, a subsequent law for diminishing that compensation ... cannot affect [a sitting judge]." *United States v. More,* 7 U.S. (3 Cranch) 159, 160 n. 2, 2 L.Ed. 397 (1805), *writ of error dism'd for want of jurisdiction.* In *More,* Congress had enacted and later abolished a system of fees for compensating justices of the peace in the District of Columbia. *Id.* One of the justices of the peace continued to charge fees under the abolished structure, and the government brought an indictment against him. *Id.* On appeal, the Circuit Court held that: (1) the compensation of justices of the peace was subject to the Compensation Clause; and (2) where a fee structure is set by law, a later-enacted statute diminishing or abolishing that structure violated the Constitution. *Id.* at 161. Because sitting justices had an expectation that they would receive compensation consistent with the then-existing fee structure, Congress could not take that structure away.

In *Will,* the Supreme Court discarded the longstanding expectations-based approach to the Compensation Clause in favor of its "due and payable" vesting rule, without clear explanation for doing so. In a terse footnote, the Court distinguished *More. See Will,* 449 U.S. at 228, n. 32, 101 S.Ct. 471. Specifically, the Court claimed that, in *More,* "the fee system was already in place as part of the justices' compensation when Congress repealed it" whereas "the increase [via the Adjustment Act] in Year 2 had not yet become part of the compensation of Article III judges" when it was repealed. *Id.* Careful consideration of the facts in *More* reveal that this is a distinction without a difference. The justices under the fee system in *More* were not entitled to compensation until they actually rendered services. *See More,* 7 U.S. at 160 n. 2 ("This compensation is given in the form of fees, payable when the services are rendered."). At all times, the justices knew the precise amount they *could* charge for a particular service, but they never knew how much their total compensation would be, for example, in a particular week. In other words, the fee system in *More* merely set out a structure for calculating the compensation, which was not "due and payable"—to use the Court's terminology in *Will*—until the justices performed the affirmative act of rendering services.

The Adjustment Act formula was no different. In the same way that the justices under the fee system in *More* did not know how much they would work in a particular year, under the Adjustment Act, Article III judges did not know how much their salary would increase in a particular year, if at all. But they did know that, once the formula was enacted for the year, it became part of the compensation due. For example, looking at Year 3 in *Will,* if we accept the dissent's proposition that the COLA of 5.5% became automatic once the President's alternative plan was adopted and transmitted to Congress—which was one month before the Year 3 blocking statute was enacted—then there is no doubt that, as was the case in *More,* the COLA "was already in place as part of the [judges'] compensation when Congress repealed it." *See Will,* 449 U.S. at 228, n. 32, 101 S.Ct. 471 (citing *More,* 3 Cranch at 161). In the same way that Congress was prohibited from abolishing the fee structure in *More* because it was part of the justices' compensation, so too should Con-

gress have been prohibited from blocking the COLA for Year 3 in *Will.*

Given these similarities, *Will*'s dismissal of *More* is unconvincing. The two opinions are irreconcilable. Either *Will* is incorrect, or the Court should have said that *More* was wrong. The Supreme Court should return to the well-established expectations-based approach to the Compensation Clause.

3. The Consequences of Abandoning the Expectations Approach

Assuming *Will*'s vesting rule allows Congress to bar "automatic" COLAs promised by definitive and precise legislative enactment, that rule is contrary to the constitutional balance the Framers carefully calibrated—one which, of necessity, delegated control over judicial salaries to the legislature, but did so in a way to guard against congressional retribution for unpopular judicial decisions. So understood, *Will*'s vesting rule puts at risk the principles the Framers struggled so hard to foster; it threatens to make the judiciary beholden to Congress in ways which undermine its independence. The Supreme Court should rethink such a rule. *See e.g., Mistretta v. United States,* 488 U.S. 361, 383, 109 S.Ct. 647, 102 L.Ed.2d 714 (1989) (encouraging vigilance against a "provision of law" that "impermissibly threatens the institutional integrity of the Judicial Branch") (quoting *Commodity Futures Trading Comm'n v. Schor,* 478 U.S. 833, 851, 106 S.Ct. 3245, 92 L.Ed.2d 675 (1986)).

The Framers' concerns were prescient. Statistics demonstrate that the erosion of judicial pay "has reached the level of a constitutional crisis that threatens to undermine the strength and independence of the federal judiciary." Chief Justice John G. Roberts, Jr., *2006 Year–End Report on the Federal Judiciary,* 39 The Third Branch 1, 1 (2007). Not only is this not the world the Framers contemplated, it is approaching one they most feared. As Hamilton explained, if judicial independence is "destroyed, the constitution is gone, it is a dead letter; it is vapor which the breath of faction in a moment may dissipate." *Commercial Advertiser* (Feb. 26, 1802) (reprinted in *The Papers of Alexander Hamilton,* Volume XXV 525 (Columbia University Press 1977)).

III

I finally turn to Section 140 of Pub. L. No. 97–92, 95 Stat. 1183, 1200 (1981), and its role in our assessment of the legality of the congressional action challenged here. I agree with the majority that the existence of Section 140 does not change the conclusion that the failure to provide COLAs mandated by the 1989 Act is unconstitutional, whether the withholding occurred before or after Congress amended that section in 2001. As the majority explains, by its own terms, Section 140 is not applicable to the salary adjustments contemplated by the 1989 Act. If it were, however, as the government contends it is, we could not enforce it because Section 140 is unconstitutional.

Section 140 provides as follows:

> Notwithstanding any other provision of law or of this joint resolution, none of the funds appropriated by this joint resolution or by any other Act shall be obligated or expended to increase, after the date of enactment of this resolution, any salary of any Federal judge or Justice of the Supreme Court, except as may be specifically authorized by Act of Congress hereafter enacted. . . .

Pub. L. No. 97–92, § 140, 95 Stat. 1183, 1200 (1981). Section 140 was a rider to a Joint Resolution providing continuing appropriations for fiscal year 1982. In *Williams,* we held that the government

could not rely on Section 140 as justification for the blocking statutes passed in 1995, 1996, 1997, and 1999 because Section 140 expired by its own terms on September 30, 1982. *Williams*, 240 F.3d at 1026 (citing Pub. L. No. 97–161, 96 Stat. 22 (1982) (extending life of provisions from March 31, 1982 to September 30, 1982); Pub. L. No. 97–92, § 102(c), 95 Stat. 1183 (1981)).

After *Williams*, Congress enacted legislation that amended Section 140 to provide that it "shall apply to fiscal year 1981 and each fiscal year thereafter." Act of Nov. 28, 2001, Pub. L. No. 107–77, § 625, 115 Stat. 803 ("2001 amendment"). Today, the majority assumes that the 2001 amendment supersedes *Williams*'s holding that Section 140 expired, but agrees with the alternative holding in *Williams* that, even if not expired, the 1989 Act provides the additional authorization required by Section 140.

Were the majority's conclusion on that point not correct, then we would be forced to conclude that Section 140 violates the Compensation Clause, both because it singles out Article III judges for disadvantageous treatment and because it violates the principle of separation of powers.

A. Section 140's Discriminatory Effect

The Supreme Court has held that a law violates the Compensation Clause when it "effectively single[s] out . . . federal judges for unfavorable treatment" in their compensation. *Hatter*, 532 U.S. at 559, 121 S.Ct. 1782. In *Hatter*, the Court struck down a statutory scheme that required sitting federal judges to pay into the Social Security system while other high-level government officials potentially were exempt from making such payments. *Id.* at 564, 572–73, 121 S.Ct. 1782. In finding the denial of the exemption to judges unconstitutional, the Court explained that the "practical upshot" of the statutory scheme was to disadvantage judges relative to "nearly every current federal employee." *Id.* at 573, 121 S.Ct. 1782.[3]

Section 140 is no different. It only overrides the automatic annual COLAs promised in the 1989 Act for judicial officers. All other federal employees—including high ranking Executive Branch appointees and Members of Congress—remain entitled to those "automatic" adjustments. Only judicial officers are beholden to Congress for an additional affirmative legislative enactment before they may receive the 1989 Act's COLAs. Thus, post–2001, Section 140 turns the 1989 Act into a law that provides a financial benefit to all federal employees other than judges and puts the judiciary in the position of annually needing to "curry favor" with the legislature for compensation increases, just as the Framers feared. That clearly violates the Compensation Clause. *See Hatter*, 532 U.S. at 576, 121 S.Ct. 1782; *Williams*, 535 U.S. at 911, 122 S.Ct. 1221 (Breyer, J., joined by Scalia and Kennedy, JJ., dissenting from denial of certiorari) ("[Section 140] refers specifically to federal judges, and it imposes a special legislative burden upon their salaries alone. The singling out of judges must throw the constitutionality of the provision into doubt.") (citing *Hatter*, 532 U.S. at 564, 121 S.Ct. 1782).

3. Justice Scalia did not join in this portion of the Court's opinion, concurring on grounds that the Compensation Clause was violated because the congressional action violated the judicial officers' reasonable expectations about their future income package. *Hatter*, 532 U.S. at 586, 121 S.Ct. 1782 (Scalia, J., concurring in part and dissenting in part) ("I disagree with the Court's grounding of this holding on the discriminatory manner in which the extension occurred."). The "discrimination" theory, however, received the votes of a majority of the Justices and, therefore, is binding precedent.

"Judges 'should be removed from the most distant apprehension of being affected in their judicial character and capacity, by anything, except their own behavior and its consequences.' " *Hatter*, 532 U.S. at 577, 121 S.Ct. 1782 (quoting James Wilson, Lectures on Law (1791), in 1 Works of James Wilson 364 (J. Andrews ed. 1896)).

The fear of disadvantageous treatment of judges under Section 140, as amended, is not hypothetical. Until recently, annual adjustments for federal judges remained in step with those for Executive Branch appointees and Members of Congress. When those groups received automatic adjustments under the 1989 Act, Congress also enacted the necessary special legislation to authorize an adjustment for judges. In fiscal year 2007, however, both General Schedule employees and Executive Branch appointees received an automatic adjustment under the 1989 Act, but Congress did not enact special legislation to adjust judicial salaries. The same thing happened in fiscal year 2010. Thus, the link between judicial salary adjustments and those for Executive Branch appointees was severed such that all nonelected federal employees other than Article III judges received COLAs in those years.[4] This is the very sort of individualized treatment of the judiciary that the Supreme Court has characterized as a "disguised legislative effort to influence the judicial will." *See Hatter*, 532 U.S. at 571, 121 S.Ct. 1782. Little could be more inconsistent with the Framers' purpose and construct under the Compensation Clause.

B. Section 140 and the Separation of Powers

Section 140 separately poses a separation of powers problem because it conditions the award of COLAs to judges on the receipt of salary adjustments by Members of Congress. The government argues that, in enacting the 1989 Act, "Congress made clear its intent to maintain a system of salary parity among Federal judges, members of Congress, and high-level Executive branch officers." Appellee's Br. 17 (citing Report of the Bipartisan Task Force on Ethics on H.R. 3660, Government Ethics Reform Act of 1989, 135 Cong. Rec. 30,756 (Nov. 21, 1989)). As noted above, any "parity" objective vis-à-vis Executive Branch officers has been abandoned. And, it is precisely because Congress has continued to use Section 140 to force a parity between judicial salaries and its own that Section 140 violates the principle of separation of powers.

The concern with the independence of the judiciary is one which flows directly from the tripartite form of government on which the Constitution is structured. In establishing the system of divided powers in the Constitution, the Framers believed it was essential that "the judiciary remain[ ] truly distinct from both the legislature and the executive." *Stern*, 131 S.Ct. at 2608 (quoting The Federalist No. 78, p. 466 (C. Rossiter ed. 1961) (A. Hamilton)). Accordingly, as the Supreme Court has noted, the Framers built into the Constitution "a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other." *Mistretta*, 488 U.S. at 382, 109 S.Ct. 647 (quoting *Buckley v. Valeo*, 424 U.S. 1, 122, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976)). Although the three branches "are not hermetically sealed from one another," Article III was designed to impose certain "basic limitations that the other branches may not transgress." *Stern*, 131 S.Ct. at 2609

4. Members of Congress did not receive salary adjustments in 2007 or 2010 because they affirmatively chose to opt out of their right to receive them under the 1989 Act. That choice was theirs, however, and not one otherwise mandated by preexisting legislation.

(citing *Nixon v. Administrator of Gen. Servs.,* 433 U.S. 425, 443, 97 S.Ct. 2777, 53 L.Ed.2d 867 (1977)).

As noted earlier, the compromise the Framers struck under the Compensation Clause was one which would entrust to Congress the power *and* obligation to ensure reasonable salary adjustments for the judiciary over time. This was a compromise born of necessity, however; this mechanism for judicial salary adjustments was not meant to tie those adjustments to legislative salary changes, or to make them dependent on prevailing political winds. The Framers certainly did not mean to use the Compensation Clause to blur the lines between the legislative and judicial branches. That is precisely what Section 140 does, however.

Congress has used Section 140 to link judicial pay to its own, affirmatively authorizing judicial compensation increases thereunder only in years where Congress finds it politically palatable to allow increases in its own. By using Section 140 in this way, Congress has ignored its constitutional duty to assess independently the adequacy of judicial compensation. And, it has ignored the obligation entrusted to it by the Framers to jealously guard the independence of the judiciary. "[W]hether the Judiciary is entitled to a compensation increase must be based upon an objective assessment of the Judiciary's needs if it is to retain its functional and structural independence." *Maron v. Silver,* 14 N.Y.3d 230, 899 N.Y.S.2d 97, 925 N.E.2d 899, 914 (2010) (finding link between legislative and judicial pay increases unconstitutional under New York state constitution).

Because Section 140 skirts Congress's obligations under the Compensation Clause and undermines the independence of the judiciary, it is unconstitutional. The Supreme Court repeatedly has made clear that it is the laws that "threaten[ ] the institutional integrity of the Judicial Branch" that violate the principle of separation of powers. *Mistretta,* 488 U.S. at 383, 109 S.Ct. 647 (quoting *Commodity Futures Trading Comm'n v. Schor,* 478 U.S. 833, 851, 106 S.Ct. 3245, 92 L.Ed.2d 675 (1986)). Under these well-established guideposts, Section 140 must fail.

IV

I agree with the majority that the failure to provide COLAs promised by the 1989 Act to the judiciary violates the Compensation Clause. I also agree that *Will* does not dictate a contrary result. "General propositions do not decide concrete cases." *Lochner v. New York,* 198 U.S. 45, 76, 25 S.Ct. 539, 49 L.Ed. 937 (1905) (Holmes, J., dissenting). The general concepts espoused in *Will* simply do not address the very concrete and different set of facts before us. If the Supreme Court concludes *Will* must be read as broadly as this Court felt forced to read it in *Williams,* however, *Will* must be overruled. To the extent Section 140 plays any role in the Court's analysis of the issues presented here, moreover, the Supreme Court should address its constitutionality and put its use to rest.

WALLACH, Circuit Judge, concurring.

I concur in the results, and in the reasoning of the decision, including the necessity of making this important determination that Congress may not exceed constitutional bounds in its relationship with the judiciary. I write separately only to clarify that this decision does not mean that any particular federal judge other than plaintiffs will necessarily accept accrued back pay.

SUBMISSION TO THE

2015 Commission on Legislative, Judicial and Executive Compensation

APPENDIX G

Compilation of Salary Data for Public Officials, Law Firms, Not-For-Profit Organizations

2014 Salaries of Senior Personnel in Executive Branch Agencies

Agency	2014 Salary
Executive Chamber	
Governor	$179,000
Lt. Governor	$151,500
Secretary to the Governor	$181,560
Counsel to the Governor	$172,482
Communications Director	$161,160
Deputy Secretary to the Governor	$154,583
Director of the Budget Division	$172,482
Deputy Director of the Budget Division (1)	$169,623
Deputy Director of the Budget Division (1)	$163,200
Deputy Director of the Budget Division (1)	$153,000
Attorney General	
Attorney General	$151,500
Counsel	$167,563
Comptroller	
Comptroller	$151,500
Counsel	$164,900
Deputy Comptroller (1)	$302,913
Deputy Comptroller (2)	$163,061
Deputy Comptroller (1)	$162,180
Adirondack Park Agency	
Executive Director	$90,080
Counsel	$102,000
Deputy Director	$106,162
Agriculture & Markets	
Commissioner	$120,800
Counsel	$147,900
First Deputy Commissioner	$143,976
Deputy Commissioner	$143,681

Agency	2014 Salary
Alcoholic Beverage Control	
Commissioner/Chairman	$120,800
Counsel	$113,220
Deputy Commissioner (1)	$116,280
Deputy Commissioner (1)	$113,206
Department of Financial Services - Banks & Insurance	
Deputy Superintendent & Counsel	$155,994
Deputy Superintendent (2)	$155,994
Deputy Superintendent - Banks (1)	$152,863
Deputy Superintendent - Banks (1)	$150,500
Child & Family Services	
Commissioner	$136,000
Counsel	$150,000
Deputy Commissioner (3)	$152,812
Deputy Commissioner (1)	$145,589
Civil Service	
Commissioner	$120,800
Counsel	$155,944
Deputy Commissioner (1)	$155,944
Deputy Commissioner (1)	$152,886
Council of Arts	
Executive Director	$109,800
Deputy Director (1)	$117,260
Corrections - Parole Board	
Commissioner	$136,000
Deputy Commissioner and Counsel	$156,000
Counsel	$143,681

Agency	2014 Salary
Deputy Commissioner (3)	$165,043
Deputy Commissioner (2)	$150,313
Criminal Justice Services	
Commissioner	
Deputy Commissioner & Counsel	$155,944
Deputy Commissioner (1)	$136, 216
Deputy Commissioner (1)	$125,000
Economic Development	
Assistant Commissioner	$144,840
Deputy Commissioner (1)	$143,681
Deputy Commissioner (2)	$111,992
Education	
President Univ. & Commissioner	$212,500
Deputy Commissioner & Counsel - Legal Affairs	$153,903
Deputy Commissioner	$166,260
Environmental Conservation	
Commissioner	$136,000
Deputy Commissioner & Counsel	$147,900
Deputy Commissioner (1)	$155,944
Deputy Commissioner (1)	$144,000
Health	
Commissioner	$136,000
Counsel	$143,681
Deputy Commissioner (1)	$163,677
Deputy Commissioner (1)	$162,639
Medicaid Inspector General	$153,000

Agency	2014 Salary
Deputy Medicaid Inspector General	$142,503
Deputy Medicaid Inspector General	$116,710
Housing & Community Renewal	
Counsel	$155,944
Deputy Commissioner (1)	$147,710
Deputy Commissioner (1)	$143,681
Human Rights	
Commissioner	$109,800
Counsel	$155,944
Deputy Commissioner	$134,640
Labor	
Commissioner	$127,000
Counsel	$147,599
Deputy Commissioner (1)	$140,250
Deputy Commissioner (1)	$136,800
Mental Retardation - Office of Alcoholism and Substance Abuse and Office for People with Developmental Disabilities	
Assistant Commissioner - Office for People with Developmental Disabilities	$146, 472
Associate Commissioner - Office for People with Developmental Disabilities	$162,837
Associate Commissioner - Office of Alcoholism and Substance Abuse	$153,962
Counsel - Office of Alcoholism and Substance Abuse	$145,904
Counsel - Office for People with Developmental Disabilities	$145,000
Deputy Commissioner - Office for People with Developmental Disabilities (1)	$164,155

Agency	2014 Salary
Deputy Commissioner - Office for People with Developmental Disabilities (1)	$151,470
Motor Vehicles	
Commissioner	$120,800
Deputy Commissioner & Counsel	$155,944
Deputy Commissioner (2)	$155,944
Deputy Commissioner (1)	$152,715
New York State Police	
Superintendent	$136,000
Counsel	$153,197
Deputy Supt of State Police (4)	$162,549
Office for the Aging	
Director	$109,800
Counsel	$130,350
Deputy Director (2)	$130,350
Deputy Director (1)	$109,347
Office of General Services	
Commissioner	$136,000
Deputy Commissioner & Counsel	$161,806
Deputy Commissioner & Counsel	$145,000
Special Counsel	$153,000
Deputy Commissioner (1)	$164,177
Deputy Commissioner (1)	$144,840
Office of Parks, Recreation & Historic Preservation	
Commissioner	$127,000
Counsel	$132,216
Deputy Commissioner (1)	$155,944
Deputy Commissioner (1)	$139,550

Agency	2014 Salary
Office of Temporary & Disability Assistance	
Commissioner	$136,000
Counsel	$130,000
Deputy Commissioner (1)	$149,745
Deputy Commissioner (2)	$145,305
Department of State	
Secretary of State	$120,800
Counsel	$145,000
Deputy Secretary of State	$127,000
Taxation & Finance	
Commissioner	$127,000
Deputy Commissioner & Counsel	$137,700
Deputy Commissioner (1)	$155,944
Deputy Commissioner (1)	$142,494
Transportation	
Commissioner	$136,000
Counsel	$152,886
Assistant Commissioner	$138,996

Source: SeeThroughNY.com

2014 Salaries of New York State Legislative Members

Annual part-time salary of $79,500 with the leaders of each body receiving stipends ranging from a high of $41,500 (Temporary President of the Senate, Leader of the IDC Conference and Speaker of the Assembly) to a low of $9,000 for a Ranking Minority Member of a legislative Committee.

Senate Member	Position	Rate of Pay	Stipend	Total Pay
Dean Skelos	Member/Temp Pres of Senate	$79,500	$41,500	$121,000
Andrea Stewart-Cousins	Member/Min Ldr of Senate	$79,500	$34,500	$114,000
John DeFrancisco	Member/Chrmn Senate Finance Com	$79,500	$34,000	$114,000
Jeffrey Klein	Member/Sr Ast Maj Ldr of Senate	$79,500	$27,500	$107,000
Michael Nozzolio	Member/V Chrmn Senate Maj Conf	$79,500	$22,000	$101,500
Elizabeth Krueger	Member/Ranking Min Member Senate Finance Com	$79,500	$20,500	$100,000
John Bonacic	Member/Chair Senate Judiciary Com	$79,500	$18,000	$ 97,500
Andrew Lanza	Member/Chrmn Senate Cities Com	$79,500	$15,000	$ 94,500
Ruth Hassell-Thompson	Member/V Chrmn Senate Min Conf	$79,500	$14,500	$ 94,000
Daniel Squadron	Member/Ranking Min Member Senate Codes Com	$79,500	$11,000	$ 90,500
Lee Zeldin	Member/Ranking Min Member of Senate Consumer Protection Com	$79,500	$ 9,000	$ 88,500

Assembly Member	Position	Rate of Pay	Stipend	Total Pay
Sheldon Silver	Member/Speaker of the Assembly	$79,500	$41,500	$121,000
Brian Kolb	Member/Min Ldr of Assembly	$79,500	$34,500	$114,000
Joseph Morelle	Member/Maj Ldr of Assembly	$79,500	$34,500	$114,000
Herman D. Farrell, Jr.	Member/Chrman Assembly Ways & Means Com	$79,500	$34,000	$114,000
Robert Oaks	Member/Ranking Min Member of Assembly Ways & Means Com	$79,500	$22,500	$102,000
Helene Weinstein	Member/Chrmn Assembly Judiciary Com	$79,500	$18,000	$ 97,500
Joseph Lentol	Member/Chrmn Assembly Codes Com Finance Com	$79,500	$18,000	$ 97,500
Alfred Graf	Member/Ranking Min Member of Assembly Codes Com	$79,500	$11,000	$ 90,500
Michael Montesano	Member/Ranking Min Member of Assembly Judiciary Com	$79,500	$11,000	$ 90,500
Sandra Galef	Member/Ranking Min Member of Assembly Real Property Tax Com	$79,500	$ 9,000	$ 88,500

In addition to their $79,500 salary, New York legislators receive a per diem of $172/full day (including overnight) or $61/partial day.

Source: EffectiveNY.org

2014 Salaries of Counsel in Major State Agencies

Agency	2014 Salary
Counsel to the Governor	$172,482
Counsel to the Attorney General	$167,563
Counsel to the Comptroller	$164,900
Deputy Comm. & Counsel to OGS	$161,806
Counsel to Mental Retardation - Office of Alcoholism & Substance Abuse/Office for People with Developmental Disabilities	$145,904/$145,000
Counsel to New York State Police	$154,422
Deputy Comm. & Counsel to Education - Legal Affairs	$153,903
Deputy Super. & Counsel to Financial Services (Banking and Insurance)	$155,944
Deputy Comm. & Counsel to Taxation & Finance	$137,700
Counsel to Health	$153,000
Counsel to Child & Family Services	$150,000
Counsel to Transportation	$155,944
Counsel to Civil Service	$155,944
Counsel to Housing & Community Renewal	$155,944
Deputy Comm. & Counsel to DMV	$155,944
Counsel to Human Rights	$155,944
Counsel to Corrections - Parole Board	$143,681
Counsel to Agriculture and Markets	$147,900
Deputy Comm. & Counsel to Environmental Conservation	$147,900
Deputy Comm. & Counsel to DCJS	$155,944
Counsel to Office of Temporary & Disability Assistance	$130,000
Counsel to Labor	$147,599
Counsel to Department of State	$145,000
Counsel to Parks, Recreation & Historic Preservation	$132,216
Counsel to the Unified Court System	$170,303

Source: SeeThroughNY.com

2014 Comparison of Base Salaries Received by First and Fifth Year Associates at Law Firms in New York City and Buffalo

Firm	1st Year Base Salary	5th Year Base Salary
Firms within NYC		
Arnold & Porter	$166,000	$247,600
Chardbourne & Parke LLP	$178,000	$218,000
Epstein Becker & Green, P.C.	$130,000	$172,000
Kirkland & Ellis	$176,500	$245,400
Paul, Weiss, Rifkind, Wharton & Garrison, LLP	$180,000	$237,400
Reed Smith LLP	$167,000	$230,000
Skadden, Arps, Slate, Meagher & Flom	$177,200	$259,500
Squadron, Ellenoff, Plesent & Sheinfeld, LLP	$172,700	$227,000
Weil, Gotshal & Manges LLP	$175,400	$260,400
Wilson, Elser, Moskowitz, Edelman & Dicker LLP	$82,700	$96,000
Firm in Buffalo		
Phillips Lytle LLP	$81,000	$98,000
New York State Supreme Court Justice	$174,000	$174,000

Source: glassdoor.com

Comparison of Annual Salaries for Top Paid Executives in Not-For-Profit Organizations

Not-For-Profit Organizations	Salary
United Nations Children's Fund	$509,250
Museum of Modern Art	$2.1 M
Salvation Army	$13,000
NY Public Library	$491,000
Boy Scouts of America	$442,900
Planned Parenthood Federation of America	$590,928
The Trevor Project	$206,552
American Red Cross	$500,000
Disabled American Veterans	$0
Ronald McDonald House Charities	$0
National Council of YMCA's of the USA	$332,100
St. Jude's Children's Research Hospital	$824,000
U.S. Olympic Committee	$742,367
United Way	$56,000
American Heart Association	$646,000
LIVESTRONG	$354,000
Cystic Fibrosis Foundation	$1.1 M
Boys & Girls Club of American	$425,000
Susan G. Komen Breast Cancer Foundation	$390,000
Dana Farber Cancer Institute	$1.4 M
Habitat for Humanity	$282,645
Make-A-Wish	$315,883
American Cancer Society	$2.5 M
National Center for Missing and Exploited Children	$451,530
Shriner's Hospital for Children	$326,120
Alzheimer's Association	$2.7 M
United Jewish Appeal	$3.2 M
New York State Supreme Court Justice	$174,000

Source: google.com

Table 4.11
SELECTED STATE ADMINISTRATIVE OFFICIALS: ANNUAL SALARIES

State or other jurisdiction	Governor	Lieutenant governor	Secretary of state	Attorney general	Treasurer	Adjutant general	Admin.	Agriculture	Auditor	Banking
Alabama	$0 (d)	$68,556	$85,248	$166,002	$85,248	$91,014	$135,000	$84,655	$85,248	$157,380
Alaska	145,000	115,000	(a-1)	136,350	122,928	136,350	136,350	121,716	133,908	110,520
Arizona	95,000	(a-2)	70,000	90,000	70,000	134,000	160,000	102,260	128,785	119,000
Arkansas	86,890	41,896	54,305	72,408	N.A.	116,342	154,085	99,960	54,305	137,782
California	173,987	130,490	130,490	151,127	139,189	176,468	. . .	175,000	175,000	150,112
Colorado	90,000	68,500	68,500	80,000	68,500	146,040	146,040	146,040	140,000	128,004
Connecticut	150,000	110,000	110,000	110,000	110,000	162,617	160,000	118,000	(c)	138,535
Delaware	171,000	78,553	127,590	145,207	113,374	121,821	. . .	119,040	108,532	111,416
Florida	130, 273 (d)	124,851	140,000	128,972	128,972	157,252	140,000	128,972	135,000	128,972
Georgia	139,339	91,609	130,690	137,791	163,125	179,367	145,000	121,557	159,215	126,945
Hawaii	143,748	140,220	. . .	140,220	140,220	238,754	(c)	133,536	133,536	110,554
Idaho	119,000	35,700	101,150	107,100	101,150	136,801	92,872	113,027	. . .	(a-24)
Illinois	177,412	135,669	156,541	156,541	135,669	109,463	123,246	133,273	151,035	135,081
Indiana	111,688	88,543	76,892	92,503	76,892	138,633	119,200	137,500	76,892	120,000
Iowa	130,000	103,212	103,212	123,669	103,212	173,270	154,300	103,212	103,212	113,300
Kansas	99,636	54,000	86,003	98,901	86,003	106,392	120,000	110,000	N.A.	105,000
Kentucky	138,012	117,329	117,329	117,329	117,329	139,456	. . .	117,329	117,329	126,000
Louisiana	130,000	115,000	115,000	115,000	115,000	191,693	167,000	115,000	132,620	145,000
Maine	70,000	(h)(e)	69,264	92,248	69,264	102,689	102,689	102,689	81,556	96,553
Maryland	150,000	125,000	87,500	125,000	125,000	130,560 (b)	138,374 (b)	130,050 (b)	. . .	117,751 (b)
Massachusetts	151,800	N.A.	130,262	130,582	127,917	172,062	159,535	131,802	137,425	135,722
Michigan	159,300	111,510	112,410	112,410	174,204	135,340	250,000	145,000	163,537	145,000
Minnesota	119,850	77,896	89,877	113,859	(a-24)	171,413	119,059	119,059	101,858	115,107
Mississippi	122,160	60,000	90,000	108,960	90,000	124,443	124,000	90,000	90,000	133,721
Missouri	133,821	86,484	107,746	116,437	107,746	90,612	124,467	120,500	107,746	105,872
Montana	108,167	86,362	88,099	115,817	(a-6)	110,808	102,485	102,485	88,099	102,485
Nebraska	105,000	75,000	85,000	95,000	85,000	101,552	149,906	109,004	85,000	107,742
Nevada	149,573	63,648	102,898	141,086	102,898	117,030	127,721	117,030	. . .	97,901
New Hampshire	121,896	(e)	105,930	117,913	105,930	105,930	117,913	100,171	. . .	105,929
New Jersey	175,000	141,000	(a-1)	141,000	141,000	141,000	. . .	141,000	141,793	141,000
New Mexico	110,000	85,000	85,000	95,000	85,000	193,787	126,250	125,000	85,000	90,000
New York	179,000 (d)	151,500	120,800	151,500	127,000	120,800	169,100	120,800	151,500	127,000
North Carolina	141,265	124,676	124,676	124,676	124,676	104,901	121,807	124,676	124,676	124,676
North Dakota	121,679	94,461	96,794	143,685	91,406	184,980	. . .	99,435	96,794	113,952
Ohio	148,886	78,041	109,986	109,986	109,986	116,397	127,400	116,397	109,985	100,485
Oklahoma	147,000	114,713	140,000	132,825	114,713	172,062	125,000	87,005	114,713	151,907
Oregon	98,600	(a-2)	76,992	82,220	72,000	171,204	190,410	142,464	147,324	. . .
Pennsylvania (f)	187,818*	157,765*	135,228*	156,264	156,264	135,228*	144,275	135,228*	156,264	135,228*
Rhode Island (g)	129,210	108,808	108,808	115,610	108,808	94,769	149,512	(a-23)	140,050	101,598
South Carolina	106,078	46,545	92,007	92,007	92,007	92,007	185,517	92,007	104,433	104,134
South Dakota	104,002	(h)	83,135	103,892	83,135	106,090	95,481	99,910	105,348	94,685
Tennessee	181,980 (d)	60,609 (e)	190,260	176,988	190,260	158,556	190,260	158,556	190,260	158,556
Texas	150,000	7,200 (i)	125,880	150,000	(a-14)	139,140	. . .	137,500	198,000	225,000 (j)
Utah	109,470	104,000	(a-1)	98,509	104,000	104,044	119,162	104,045	104,000	115,947
Vermont	145,538	61,776	95,139	113,901	92,269	100,069	124,010	124,010	95,139	107,286
Virginia	175,000	36,321	152,793	150,000	162,214	135,548	152,793	160,394	168,279	157,538
Washington	166,891	93,948	116,950	151,718	116,950	167,868	147,012	125,400	116,950	125,400
West Virginia	150,000	(e)	95,000	95,000	95,000	125,000	95,000	95,000	95,000	75,000
Wisconsin	144,423	76,261	68,566	140,147	68,566	125,500	126,756	121,202	114,351	N.A.
Wyoming	105,000	(a-2)	92,000	147,000	92,000	130,129	140,000	110,748	92,000	99,000
Guam	90,000	85,000	. . .	105,286	52,492	68,152	88,915	60,850	100,000	88,915
No. Mariana Islands	70,000	65,000	. . .	80,000	40,800 (b)	. . .	54,000	40,800 (b)	80,000	40,800 (b)
Puerto Rico	70,000	. . .	125,000	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
U.S. Virgin Islands	80,000	75,000	(a-1)	76,500	76,500	85,000	76,500	76,500	76,500	75,000

Sources: The Council of State Governments' survey of state personnel agencies and state websites, February 2014.

Key:

N.A. — Not available.

. . . — No specific chief administrative official or agency in charge of function.

(a) Chief administrative official or agency in charge of function:
(a-1) Lieutenant governor.
(a-2) Secretary of state.
(a-3) Attorney general.
(a-4) Treasurer.
(a-5) Adjutant general.
(a-6) Administration.
(a-7) Agriculture.
(a-8) Auditor.
(a-9) Banking.
(a-10) Budget.
(a-11) Civil rights.
(a-12) Commerce.
(a-13) Community affairs.
(a-14) Comptroller.
(a-15) Consumer affairs.
(a-16) Corrections.
(a-17) Economic development.
(a-18) Education (chief state school officer).
(a-19) Election administration.
(a-20) Emergency administration.
(a-21) Employment Services.
(a-22) Energy.
(a-23) Environmental protection.

SELECTED STATE ADMINISTRATIVE OFFICIALS: ANNUAL SALARIES—Continued

State or other jurisdiction	Budget	Civil rights	Commerce	Community affairs	Comptroller	Consumer affairs	Corrections	Economic development	Education	Election admin.
Alabama	$177,266	. . .	$162,232	$91,014	$131,633	$105,403	$123,500	(a-13)	$198,000	$72,686
Alaska	167,568	153,720	136,350	(a-12)	122,710	(a-12)	136,350	(a-12)	136,350	129,420
Arizona	140,000	123,651	300,000	98,133	117,702	135,000	160,000	(a-12)	85,000	(a-2)
Arkansas	90,736	. . .	(a-17)	N.A.	112,696	117,947	147,542	138,322	228,888	71,710
California	(a-24)	. . .	. . .	138,528	139,189	175,000	225,000	. . .	151,127	126,588
Colorado	156,465	124,572	. . .	137,280	126,540	124,728	150,000	150,000	225,000	117,600
Connecticut	152,626	110,000	170,000	187,000	110,000	127,500	160,000	170,000	185,000	132,804
Delaware	147,370	79,254	(a-2)	. . .	147,370	121,768	147,370	127,590	160,145	81,128
Florida	150,000	93,000	N.A.	115,000	128,972	97,698	140,000	140,000	275,000	N.A.
Georgia	155,000	105,202	125,000	147,000	N.A.	130,000	149,000	169,500	127,500	85,000
Hawaii	140,220	101,688	133,536	. . .	133,536	107,580	133,536	133,536	150,000	80,004
Idaho	119,412	67,787	147,908	. . .	101,150	(a-3)	126,152	(a-12)	101,150	(a-2)
Illinois	125,004	115,613	142,417	(a-12)	135,669	(a-3)	150,228	(a-12)	203,445	121,648
Indiana	120,000	103,000	(a-17)	90,000	(a-8)	99,639	130,000	151,000	92,503	(c)
Iowa	136,500	97,460	105,000	98,592	121,284	128,890	147,846	154,300	147,000	108,550
Kansas	113,000	76,476	103,000	N.A.	115,000	90,000	125,000	108,529	170,000	(a-2)
Kentucky	144,759	117,822	137,865	113,474	106,152	86,928	93,324	250,000	225,000	73,500
Louisiana	118,872	82,347	320,000	75,000	167,000	92,560	136,719	320,000	275,000	115,003
Maine	83,033	69,409	(a-17)	(a-17)	90,355	96,553	102,689	102,689	102,689	83,574
Maryland	166,082(b)	110,699(b)	155,000(b)	. . .	125,000	121,005(b)	166,082(b)	155,000(b)	195,000	109,372(b)
Massachusetts	115,000	125,047	159,135	148,277	169,861	148,277	149,290	159,135	159,135	130,262
Michigan	250,000	145,000	151,500	. . .	136,253	. . .	146,450	. . .	191,410	(c)
Minnesota	(a-24)	119,059	119,059	(a-17)	(a-24)	111,426	119,059	119,059	119,059	(a-2)
Mississippi	(a-6)	. . .	(a-7)	130,000	(a-6)	82,000	132,761	176,500	307,125	80,000
Missouri	102,500	80,500	110,500	95,500	95,789	(a-3)	120,500	110,500	185,904	90,144
Montana	102,485	75,658	102,485	66,950	95,530	71,515	104,635	97,850	104,635	73,881
Nebraska	149,906	83,429	134,281	102,000	103,784	(a-3)	115,001	134,281	200,000	87,203
Nevada	(a-6)	87,773	127,721	. . .	102,898	74,367	127,721	N.A.	124,908	(c)
New Hampshire	105,930	80,971	114,554	. . .	106,575	100,171	117,913	87,423	114,553	(a-2)
New Jersey	133,507	120,000	(a-17)	141,000	141,000	136,000	141,000	186,600	141,000	115,000
New Mexico	95,950	N.A.	123,725	N.A.	110,088	81,448	107,060	123,725	126,250	85,000
New York	169,100	109,800	120,800	120,800	151,500	127,000	136,000	1(d)	212,500	(k)
North Carolina	(a-24)	98,446	135,000	. . .	155,159	N.A.	122,194	. . .	124,676	105,000
North Dakota	122,412	93,600	148,248	. . .	122,412	121,452	124,980	119,784	110,192	48,300
Ohio	150,405	96,408	121,950	90,002	150,405	102,898	127,400	128,502	192,504	109,986
Oklahoma	90,000	N.A.	90,000	N.A.	100,000	105,000	132,309	N.A.	124,373	105,665
Oregon	147,324	104,904	157,032	146,310	127,884	157,032	164,883	157,032	241,122	127,368
Pennsylvania (f)	149,497	132,949	142,741*	121,526	142,025	118,827	150,253*	142,741*	150,253*	102,240
Rhode Island (g)	154,151	81,363	(a-9)	N.A.	119,343	(a-3)	145,644	185,000(l)	203,000	137,573
South Carolina	128,060	N.A.	162,640	N.A.	92,007	106,762	154,879	(a-12)	92,007	90,281
South Dakota	(a-24)	43,784	(a-44)	(a-48)	(a-40)	52,447	106,090	123,064	109,803	51,200
Tennessee	142,476	116,964	(a-17)	(a-17)	190,260	. . .	158,556	190,260	211,408	121,560
Texas	141,400	91,900	. . .	129,250	150,000	126,150	260,000	151,500	215,000	(c)
Utah	137,871	80,679	129,018	113,691	130,187	129,018	116,594	129,247	200,782	100,014
Vermont	102,045	96,990	124,010	87,775	(a-24)	96,990	107,286	87,775	124,010	95,139
Virginia	162,470	80,558	160,433	128,772	162,344	110,514	153,000	278,995	180,796	106,080
Washington	(a-24)	104,491	151,704	(a-12)	(a-24)	(a-3)	163,056	(a-12)	121,618	(a-2)
West Virginia	98,616	N.A.	95,000	95,000	(a-8)	(a-13)	80,000	(a-13)	165,000	(a-2)
Wisconsin	124,977	96,963	. . .	. . .	116,573	98,982	126,251	. . .	121,307	106,432
Wyoming	112,500	78,087	147,145	N.A.	(a-8)	125,520	135,319	(a-12)	92,000	98,134
Guam	88,915	. . .	88,915	. . .	83,400	55,341	67,150	82,025	82,025	61,939
No. Mariana Islands	54,000	49,000	52,000	52,000	40,800(b)	52,000	40,800(b)	45,000	80,000	53,000
Puerto Rico	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
U.S. Virgin Islands	76,500	60,000	76,500	(c)	76,500	76,500	76,500	85,000	76,500	135,000

(a-24) Finance.
(a-25) Fish and wildlife.
(a-26) General services.
(a-27) Health.
(a-28) Higher education.
(a-29) Highways.
(a-30) Information systems.
(a-31) Insurance.
(a-32) Labor.
(a-33) Licensing.
(a-34) Mental health.
(a-35) Natural resources.
(a-36) Parks and recreation.
(a-37) Personnel.
(a-38) Planning.
(a-39) Post audit.
(a-40) Pre-audit.
(a-41) Public library development.
(a-42) Public utility regulation.
(a-43) Purchasing.
(a-44) Revenue.
(a-45) Social services.
(a-46) Solid waste management.
(a-47) State police.
(a-48) Tourism.
(a-49) Transportation.
(a-50) Welfare.

SELECTED STATE ADMINISTRATIVE OFFICIALS: ANNUAL SALARIES — Continued

State or other jurisdiction	Emergency mgmt.	Employment services	Energy	Environ. protection	Finance	Fish & wildlife	General services	Health	Higher education	Highways
Alabama	$124,200	$84,276	$97,766	$144,196	$177,266	$105,403	$97,766	$268,996	$201,144	$169,000
Alaska	123,252	107,964	180,000	136,350	129,420	136,350	(a-43)	136,350	320,000	167,028
Arizona	100,000	77,970	100,000	135,000	(a-14)	160,000	116,000	136,000	300,000	128,700
Arkansas	93,389	146,729	87,246	128,960	(a-6)	131,415	131,161	215,448	166,464	165,022
California	175,000	150,112	132,396	175,000	175,000	150,112	159,300	(c)	(c)	(a-49)
Colorado	105,000	117,504	130,000	144,876	126,540	144,876	130,404	215,000	146,040	138,000
Connecticut	170,000	148,000	139,000	139,000	187,000	(c)	160,000	170,000	380,000	175,000
Delaware	90,715	96,066	N.A.	(a-35)	147,370	98,540	108,171	169,983	109,301	(a-49)
Florida	140,000	140,000	90,000	140,000	128,972	129,430	140,000	140,000	200,000	128,000
Georgia	122,004	88,456	116,452	175,000	148,000	113,000	N.A.	175,000	497,000	120,000
Hawaii	116,172	86,364 (b)	86,364 (b)	86,364 (b)	(c)	86,364 (b)	(a-14)	. . .	325,008	86,364 (b)
Idaho	121,596	119,995	84,489	114,587	104,790	132,600	. . .	148,595	121,201	(a-49)
Illinois	128,920	142,339	(a-42)	151,708	(a-10)	(a-35)	(a-6)	150,228	190,000	(a-49)
Indiana	135,000	118,565	75,000	120,943	130,000	81,421	(a-6)	137,500	163,001	(a-49)
Iowa	112,070	147,000	(a-17)	119,704	124,946	124,946	124,946	133,900	. . .	155,709
Kansas	(c)	108,000	71,600	105,019	115,000	73,320	114,000	190,000	197,000	(a-49)
Kentucky	N.A.	76,125	137,865	102,900	137,865	N.A.	. . .	164,616	360,000	119,236
Louisiana	130,008	108,621	. . .	137,197	167,000	123,614	167,000	236,001	275,000	170,000
Maine	72,800	N.A.	(a-38)	102,689	(a-6)	102,689	86,902	109,220	N.A.	(a-49)
Maryland	127,500 (b)	116,485 (b)	130,050 (b)	(b)	166,082 (b)	. . .	(a-6)	166,082 (b)	127,500 (b)	159,858
Massachusetts	142,875	154,500	127,963	138,267	159,135	135,097	133,295	139,766	219,606	154,622
Michigan	146,450	123,244	98,766	145,000	250,000	(c)	. . .	146,450	. . .	(a-49)
Minnesota	119,059	109,221	121,472	119,059	119,059	117,395	(a-6)	119,038	372,248	119,059
Mississippi	107,868	122,000	137,996	120,386	(a-6)	120,636	. . .	200,000	341,250	(a-49)
Missouri	97,508	94,510	85,316	99,020	102,500	(c)	95,789	120,504	170,500	(a-49)
Montana	80,249	100,156	98,520	102,485	95,530	102,485	. . .	102,485	296,229	(a-49)
Nebraska	101,552	103,185	93,497	120,000	(c)	97,440	107,719	149,286	169,450	(a-49)
Nevada	97,901	127,721	106,904	123,783	(a-14)	117,030	. . .	(c)	23,660 (d)	(a-49)
New Hampshire	105,930	105,930	80,971	114,554	(a-10)	100,171	(a-6)	100,171	79,664	(a-49)
New Jersey	132,300	N.A.	100,000	141,000	133,507	105,783	(c)	141,000	141,000	123,500
New Mexico	116,150	95,950	106,050	106,050	126,250	. . .	106,050	123,725	126,250	N.A.
New York	136,000	127,000	120,800	136,000	151,500	136,000	136,000	136,000	212,500	136,000
North Carolina	92,716	N.A.	. . .	118,000	(d)	116,886	121,807	. . .	525,000	161,080
North Dakota	101,640	112,380	124,296	114,252	122,412	118,416	176,064	188,700	291,000	(a-49)
Ohio	100,901	127,400	128,502	124,904	(c)	104,270	119,600	141,170	159,515	127,400
Oklahoma	75,705	106,000	90,000	123,013	108,000	123,033	120,000	194,244	394,983	(a-49)
Oregon	110,052	149,520	142,464	142,464	(a-4)	142,464	(a-6)	173,100	155,820	154,692
Pennsylvania (f)	135,003	125,164	119,981	150,253*	149,497	(c)	142,741*	150,253*	121,174	136,235
Rhode Island (g)	88,177	130,152	75,154	108,460	(a-44)	(a-23)	(a-6)	134,975	265,000 (c)	(a-49)
South Carolina	99,910	N.A.	111,055	(c)	185,517	129,877	116,000	154,879	150,480	153,010
South Dakota	79,698	(a-37)	(a-48)	(a-35)	127,308	110,334	(a-6)	110,334	345,998	(a-47)
Tennessee	112,200	152,256	140,484	168,700	190,260	168,708	159,996	176,868	200,100	(a-49)
Texas	N.A.	157,410	. . .	167,070	(a-14)	180,000	142,500	210,000	188,163	(a-49)
Utah	N.A.	136,450	101,454	119,746	130,187	109,662	116,803	136,451	132,797	(a-49)
Vermont	88,275	100,818	107,286	102,960	102,045	94,786	101,338	121,451	. . .	124,010
Virginia	. . .	118,000	94,248	179,117	165,592	135,547	152,104	191,465	187,960	(c)
Washington	167,868	151,704	145,000	145,000	163,056	141,012	147,012	144,324	N.A.	(a-49)
West Virginia	65,000	75,000	N.A.	95,000	(a-6)	75,000	80,004	175,000	N.A.	119,999
Wisconsin	99,992	111,100	101,000	126,251	124,977	126,251	126,756	124,355	525,000	(c)
Wyoming	91,188	140,000	103,107	118,902	N.A.	137,249	112,500	187,000	129,796	143,328
Guam	68,152	73,020	55,303	60,850	88,915	60,850	60,528	74,096	195,000	88,915
No. Mariana Islands	45,000	40,800 (b)	45,000	58,000	54,000	40,800 (b)	54,000	80,000	80,000	40,800 (b)
Puerto Rico	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
U.S. Virgin Islands	71,250	76,500	69,350	76,500	76,500	76,500	76,500	76,500	76,500	65,000

(b) Salary ranges, top figure in ranges follow:

Hawaii: Employment Services, $122,940; Energy, $122,940; Environmental Protection, $122,940; Fish and Wildlife, $122,940; Highways, $122,940; Information Systems, $122,940; Licensing, $117,096; Parks and Recreation, $122,940; Planning, $130,452; Post Audit, $122,940; Pre-Audit, $122,940; Solid Waste Management, $117,096; Welfare, $134,352.

Maryland: For these positions the salary in the chart is the actual salary and the following are the salary ranges: Adjutant General, $107,196–$143,270; Administration, $107,196–$143,270; Agriculture, $107,196–$143,270; Banking, $73,341–$117,751; Budget, $124,175–$166,082; Civil Rights, $86,161–$115,000; Commerce, $124,175–$166,082; Consumer Affairs, $78,233–$125,743; Corrections, $124,175–$166,082; Economic Development, $124,175–$166,082; Elections Administration, $86,161–$115,000; Emergency Management, $99,637–$133,112; Workforce Development, $92,640–$123,708; Energy, $99,637–$133,112; Environmental Protection, $115,356–$154,235; Finance, $124,175–$166,082; Health, $124,175–$166,082; Higher Education, $115,356–$154,235; Information Services, $124,175–$166,082; Insurance, $124,175–$166,082; Labor, $124,175–$166,082; Licensing, $86,161–$115,000; Mental Health shared duties, $143,767–$237,562 (actual, $211,632) and $92,640–$123,708 (actual, $120,870); Natural Resources, $115,356–$154,235; Parks and Recreation, $86,161–$115,000; Personnel, $99,637–$133,112; Planning $107,196–$143,270: Pre-Audit $92,640–$123,708; Public Library, $86,161–$115,000; Purchasing $80,160–$106,940; Revenue, $92,460–$123,708; Social Services, $124,175–$166,082; Solid Waste Management, $86,161–$115,000; State Police, $124,175–$166,082; Tourism, $92,640–$123,708; Transportation, $124,175–$166,082; Welfare, $124,175–$166,082.

SELECTED STATE ADMINISTRATIVE OFFICIALS: ANNUAL SALARIES—Continued

State or other jurisdiction	Info. systems	Insurance	Labor	Licensing	Mental health	Natural resources	Parks & recreation	Personnel	Planning	Post audit
Alabama	$128,441	$91,014	$139,259	. . .	$145,000	$141,000	$0	$160,440	(a-13)	$241,695
Alaska	118,880	104,436	136,350	124,740	94,284	136,350	118,800	134,268	. . .	(a-8)
Arizona	131,387	115,650	126,069	. . .	109,037	131,500	122,200	125,000	140,000	. . .
Arkansas	139,793	129,526	127,574	. . .	109,990	110,533	120,978	104,449	. . .	184,784
California	175,000	139,189	175,000	150,112	(c)	175,000	150,112	150,112	. . .	. . .
Colorado	156,000	120,000	146,040	125,004	133,116	146,040	144,876	126,540	138,000	(a-8)
Connecticut	158,000	143,000	148,000	114,914	(c)	150,720	151,230	160,000	141,600	(a-8)
Delaware	160,145	108,532	119,040	97,714	(c)	127,590	98,539	117,752	95,158	(a-8)
Florida	N.A.	133,158	140,000	67,000	120,000	140,000	113,000	100,000	115,000	128,972
Georgia	135,000	120,394	121,570	85,000	180,000	141,103	113,000	128,748	(a-10)	(a-8)
Hawaii	86,364 (b)	110,544	133,536	82,272 (b)	119,508	133,536	86,364 (b)	133,536	91,656 (b)	86,364 (b)
Idaho	(a-6)	101,254	115,336	83,116	. . .	123,593	91,561	99,548	. . .	(a-14)
Illinois	(a-6)	135,081	124,090	(a-9)	(a-45)	133,273	(a-35)	(a-6)	. . .	(a-8)
Indiana	115,000	105,000	105,000	100,000	107,990	115,000	84,445	116,000	. . .	104,000
Iowa	137,197	106,623	112,070	. . .	124,130	128,890	(a-25)	124,405	. . .	. . .
Kansas	140,000	86,004	108,000	65,153	75,000	111,490	111,490	92,000	N.A.	115,296
Kentucky	136,500	100,217	137,865	. . .	114,605	100,218	111,000	137,865	148,719	(a-8)
Louisiana	150,000	115,000	137,000	. . .	230,090	129,210	115,627	128,690	108,930	N.A.
Maine	96,553	88,545	102,689	102,689	(a-45)	102,689	(a-35)	90,355	N.A.	N.A.
Maryland	166,082 (b)	(b)	158,974 (b)	100,581 (b)	(b)(c)	148,778 (b)	115,000 (b)	117,416 (b)	124,848 (b)	N.A.
Massachusetts	170,000	131,802	106,080	117,299	(c)	159,135	138,627	151,519	159,135	(a-8)
Michigan	156,550	145,000	151,500	151,500	136,253	145,000	123,107	143,065	. . .	(a-8)
Minnesota	133,245	115,107	119,059	105,456	(a-45)	119,059	117,395	(a-24)	N.A.	(a-8)
Mississippi	160,047	90,000	. . .	. . .	164,357	120,386	120,636	111,143	96,303	(a-8)
Missouri	110,500	120,500	120,500	95,260	114,378	120,500	110,500	95,789	102,500	107,746
Montana	117,972	88,099	102,485	90,509	100,829	102,485	99,373	87,568	97,850	119,326
Nebraska	134,281	118,728	134,281	105,627	128,365	116,444	118,722	97,138	149,906	(a-8)
Nevada	117,030	117,030	97,901	. . .	(c)	127,721	107,465	107,465	. . .	. . .
New Hampshire	117,913	105,930	105,930	105,930	105,930	114,554	91,965	88,933	. . .	(a-14)
New Jersey	140,000	130,000	141,000	. . .	(c)	125,000	110,000	141,000	95,000	. . .
New Mexico	101,000	101,000	95,950	101,000	. . .	106,050	93,790	119,180	73,979	85,000
New York	160,000	127,000	127,000	(c)	(c)	136,000	127,000	120,800	1	151,500
North Carolina	155,066	124,676	124,676	. . .	N.A.	128,000	. . .	139,000	N.A.	124,676
North Dakota	154,260	96,793	93,600	. . .	105,816	. . .	96,732	107,424	. . .	106,620
Ohio	124,758	150,405	90,397	(m)	(c)	127,400	98,800	99,382	128,502	(a-8)
Oklahoma	160,000	126,713	105,053	. . .	152,000	86,310	86,310	108,000	. . .	. . .
Oregon	178,992	160,047	77,000	N.A.	143,076	N.A.	142,464	133,668	. . .	147,324
Pennsylvania (f)	142,886	135,228*	150,253*	123,619	130,563	142,741*	132,949	145,018	145,018	(a-8)
Rhode Island (g)	137,604	(a-9)	(a-21)	(n)	143,206	(a-23)	(a-23)	146,165	115,891	N.A.
South Carolina	127,462	130,000	124,973	124,973	(c)	129,877	120,379	120,493	N.A.	101,361
South Dakota	116,699	88,071	100,000	N.A.	100,786	106,090	88,050	106,090	N.A.	(a-8)
Tennessee	166,476	158,556	158,556	101,772	158,556	168,708	84,792	158,556	N.A.	(a-14)
Texas	175,000	175,000	157,410	166,500	200,000	167,070	180,000	. . .	141,400	(a-8)
Utah	132,797	111,478	104,045	112,752	101,267	129,247	109,662	111,520	137,871	(a-8)
Vermont	114,130	107,286	100,818	86,258	117,499	124,259	94,786	101,837	. . .	(a-8)
Virginia	160,650	156,848	118,136	114,240	175,000	152,793	130,560	141,689	(a-10)	(a-8)
Washington	147,157	116,950	140,650	116,964	(a-45)	121,618	116,964	137,304	(a-24)	N.A.
West Virginia	109,999	92,500	70,000	. . .	(a-27)	75,000	75,000	70,000	(a-17)	91,750
Wisconsin	121,200	118,676	86,464	111,608	111,608	126,251	107,954	111,100	. . .	(a-8)
Wyoming	139,928	100,567	88,439	66,682	(c)	113,300	103,104	108,000	126,000	100,002
Guam	88,915	88,915	73,020	88,915	75,208	60,850	60,850	88,915	88,915	100,000
No. Mariana Islands	45,000	40,800 (b)	45,000	45,360	40,800 (b)	52,000	40,800 (b)	60,000	45,000	80,000
Puerto Rico	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.
U.S. Virgin Islands	71,250	75,000	76,500	76,500	70,000	76,500	76,500	76,500	76,500	55,000

Northern Mariana Islands: $49,266 top of range applies to the following positions: Treasurer, Banking, Comptroller, Corrections, Employment Services, Fish and Wildlife, Highways, Insurance, Mental Health and Retardation, Parks and Recreation, Purchasing, Social/Human Services, Transportation.

(c) Responsibilities shared between:

California—Health—Responsibilities shared between Director of Health Care Services, $165,000 and Director Department of Public Health, $222,000.

California—Higher Education—Responsibilities shared between Chancellor of California Community Colleges, $198,504 and California Post-Secondary Education Commission (Vacant).

California—Mental Health—Responsibilities shared between Director of Mental Health, vacant and Director of Developmental Services, $165,000.

Connecticut—Auditor—Responsibilities shared between John C. Geragosian, $158,676 and Robert M. Ward, $163,744.

Connecticut—Fish and Wildlife—Responsibilities shared between Director of Wildlife, $137,388, Director of Inland Fisheries, $121,558, and Director of Marine Fisheries, $136,328.

Connecticut—Mental Health—Responsibilities shared between Commissioner, Mental Health, $147,800, and Commissioner, Retardation, $150,000.

Delaware—Mental Health—Responsibilities shared between Director, Division of Substance Abuse and Mental Health, Department of Health and Social Services, $143,713, and Director, Division of Developmental Disabilities Service, same department, $114,919.

Delaware—Social Services—Function split between two cabinet positions: Secretary, Dept. of Health and Social Services: $147,370 (if incumbent holds a medical license, amount is increased by $12,000; if board-certified physician, a supplement of $3,000 is added) and Acting Secretary, Dept. of Svcs. for Children, Youth and their Families, $132,741.

SELECTED STATE ADMINISTRATIVE OFFICIALS: ANNUAL SALARIES—Continued

State or other jurisdiction	Pre-audit	Public library dvpmt.	Public utility reg.	Purchasing	Revenue	Social services	Solid waste mgmt.	State police	Tourism	Trans-portation	Welfare
Alabama	(a-14)	$107,737	$103,490	$90,725	$91,014	$140,000	$100,198	$105,403	$91,014	(a-29)	(a-45)
Alaska	. . .	129,420	129,420	97,440	136,350	(a-27)	102,828	136,350	116,052	136,350	129,420
Arizona	(a-14)	70,048	133,574	116,000	145,000	173,250	96,510	139,549	105,000	130,000	173,250
Arkansas	N.A.	108,629	125,493	102,451	137,162	159,443	N.A.	117,610	94,172	(a-29)	(a-45)
California	(a-14)	. . .	138,528	(a-26)	150,112	203,616	150,112	186,336	. . .	165,000	175,000
Colorado	(a-14)	112,543	114,948	99,600	146,040	150,000	136,488	135,000	100,000	151,840	150,000
Connecticut	(a-14)	134,640	137,686	140,844	170,000	170,000	139,395	170,000	133,900	175,000	170,000
Delaware	(a-8)	83,807	104,000	(a-26)	124,603	(c)	155,384	160,580	92,723	137,995	115,022
Florida	128,972	95,500	125,000	135,000	112,000	140,000	113,000	127,500	N.A.	140,000	100,932
Georgia	(a-8)	N.A.	116,452	132,000	158,000	171,600	80,187	140,000	125,000	187,979	137,940
Hawaii	86,364 (b)	120,000	116,172	116,172	133,536	133,536	82,272 (b)	. . .	205,008	133,536	94,428 (b)
Idaho	(a-14)	95,680	94,010	(a-6)	87,156	(a-27)	. . .	116,542	64,667	174,200	106,475
Illinois	(a-14)	100,511	107,508	(a-6)	142,339	150,228	(a-23)	132,566	(a-12)	150,228	142,339
Indiana	76,892	. . .	114,902	80,000	123,720	137,500	97,929	135,910	92,790	137,500	(a-45)
Iowa	108,555	137,197	125,008	103,126	152,955	154,300	(a-23)	128,890	99,570	147,014	124,946
Kansas	80,829	85,000	99,292	114,000	107,990	105,000	86,965	107,990	82,961	110,000	N.A.
Kentucky	. . .	91,947	121,275	90,142	121,632	105,922	79,739	111,352	110,250	137,865	(a-45)
Louisiana	119,600	107,000	130,000	118,976	250,000	129,995	102,000	134,351	107,000	170,000	110,411
Maine	(a-14)	90,667	117,104	68,723	96,553	109,220	74,297	96,553	(a-17)	102,689	(a-45)
Maryland	110,000 (b)	115,000 (b)	150,000	(b)	120,026 (b)	(b)	114,167 (b)	166,082 (b)	114,444 (b)	166,082 (b)	(a-45)
Massachusetts	(a-8)	101,501	139,986	133,295	149,290	137,692	138,267	216,185	133,295	159,135	139,152
Michigan	. . .	. . .	140,000	133,403	123,244	145,000	114,001	146,450	. . .	146,450	(a-45)
Minnesota	(a-8)	N.A.	(c)	117,291	119,059	(a-34)	119,059	117,395	115,107	119,059	(a-34)
Mississippi	(a-8)	108,000	141,505	79,633	108,185	130,000	78,008	138,115	85,748	144,354	130,000
Missouri	95,789	84,504	105,570	95,789	110,504	120,504	72,500	107,688	75,500	168,396	97,804
Montana	124,621	91,680	98,125	. . .	102,485	102,485	102,485	97,881	88,895	102,485	(a-45)
Nebraska	103,784	99,362	112,731	107,719	135,000	165,691	71,685	115,176	82,001	143,150	(a-45)
Nevada	. . .	(c)	123,783	97,901	127,721	127,721	(a-23)	127,721	117,030	127,721	(c)
New Hampshire	(a-14)	91,965	111,687	75,410	117,913	121,896	100,171	105,930	91,965	117,913	100,171
New Jersey	. . .	. . .	125,301	130,000	128,000	(c)	108,128	132,300	90,000	141,000	127,200
New Mexico	95,429	71,434	90,000	91,910	106,050	106,050	85,368	116,150	126,250	113,827	118,170
New York	151,500	212,500	127,000	136,000	127,000	136,000	136,000	136,000	1	136,000	136,000
North Carolina	(a-8)	108,068	138,849	112,000	128,000	111,601	111,426	118,815	98,758	135,000	93,634
North Dakota	. . .	. . .	99,435	90,012	105,050	161,316	91,272	103,668	114,432	150,804	161,316
Ohio	150,405	99,902	124,509	119,600	127,400	(c)	81,037	130,000	100,006	99,341	127,400
Oklahoma	(a-14)	85,850	(c)	95,000	123,126	185,000	103,792	111,133	86,310	139,000	185,000
Oregon	(a-10)	101,400	146,737	90,600	142,464	173,100	N.A.	142,464	N.A.	172,735	173,100
Pennsylvania (f)	(a-4)	121,996	145,241	115,013	142,741*	150,253*	119,981	142,741*	99,834	150,253*	150,253*
Rhode Island (g)	(a-14)	124,420	125,071	121,409	156,876	(c)	(o)	148,937	(a-17)	130,000	(a-45)
South Carolina	92,007	N.A.	171,683	112,602	139,167	154,879	162,578	153,010	120,379	156,220	(a-45)
South Dakota	83,135	74,920	96,956	54,133	100,786	111,182	93,397	95,103	90,177	106,090	(a-45)
Tennessee	139,428	126,840	152,256	74,316	158,556	158,556	121,800	188,148	158,556	158,556	158,556
Texas	(a-14)	140,000	126,250	134,330	(a-14)	210,000	N.A.	183,500	110,270	281,800	260,000
Utah	(a-24)	113,692	119,162	116,803	119,162	117,449	109,850	116,803	111,540	157,164	97,257
Vermont	(a-24)	90,106	131,019	101,338	99,570	124,010	102,960	114,920	87,173	124,010	107,286
Virginia	(a-14)	144,276	(c)	138,476	148,144	147,000	179,117	158,088	164,305	160,433	147,000
Washington	(a-4)	(a-2)	128,160	(a-6)	(a-6)	163,056	(a-23)	151,704	N.A.	163,056	(a-45)
West Virginia	(a-8)	72,000	90,000	105,144	95,000	(a-27)	79,700	85,000	70,000	99,999	(a-27)
Wisconsin	(a-8)	111,100	131,000	99,489	121,707	123,223	107,954	106,736	109,083	126,249	101,000
Wyoming	(a-8)	97,738	120,340	71,100	116,457	130,596	103,800	116,000	115,676	(a-29)	(a-45)
Guam	88,915	55,303	1,200	88,915	88,915	74,096	88,915	74,096	88,591	. . .	74,096
No. Mariana Islands	54,000	45,000	80,000	40,800 (b)	45,000	40,800 (b)	54,000	54,000	70,000	40,800 (b)	52,000
Puerto Rico	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	108,000	N.A.	N.A.	N.A.
U.S. Virgin Islands	76,500	53,350	54,500	76,500	76,500	76,500	76,500	76,500	76,500	65,000	76,500

Hawaii—Administration—There is no one single agency for Administration. The functions are divided among the Director of Budget and Finance, Director of Human Resources Development and the Comptroller.

Hawaii—Finance—Responsibilities shared between Director of Budget and Finance, $140,220, and Comptroller, $133,536.

Indiana—Elections Administration—Responsibilities shared between Co-Directors Brad King, $79,129, and Trent Deckard, $78,554.

Kansas—Emergency Management—Responsibilities shared between Adjutant General, $106,392, and Deputy Director, $72,000.

Maryland—Mental Health—Responsibilities shared between Executive Director of Mental Hygiene Administration,$211,632, and Director of Developmental Disabilities Administration,$120,870.

Massachusetts—Mental Health—Responsibilities shared between Commissioners Marcia Fowler, $149,346, and Elin M. Howe, $148,277.

Michigan—Elections Administration—Responsibilities shared between Secretary of State Ruth Johnson, $112,410, and Bureau Director Christopher Thomas, $123,244.

Michigan—Fish and Wildlife—Responsibilities shared between Chief of Fisheries, $110,226, and Chief of Wildlife, $110,004.

Minnesota—Public Utility Regulation—Responsibilities shared between five commissione's with salaries of $97,115 for each.

Missouri—Fish and Wildlife—Responsibilities shared between Administrator, Division of Fisheries, Department of Conservation, $100,344; Administrator, Division of Wildlife, same department, $82,872.

Nebraska—Finance—Responsibilities shared between Auditor of Public Accounts, $85,000; Director of Administration, $149,906; and State Tax Commissioner, $135,000.

SELECTED STATE ADMINISTRATIVE OFFICIALS: ANNUAL SALARIES—Continued

Nevada—Elections Administration—Responsibilities shared between Secretary of State, $102,898; Deputy Secretary of State for Elections, $107,465; and Chief Deputy Secretary of State, $117,030.

Nevada—Health and Welfare—Responsibilities shared between Director, Health and Human Services, $127,721, and Division Administrator, $123,783.

Nevada—Mental Health—Responsibilities shared between Director, Health and Human Services, $127,721, and Division Administrator, $123,783.

Nevada—Public Library Development—Responsibilities shared between Director, Department of Tourism and Cultural Affairs, $117,030, and Division Administrator, Library and Archives, $97,901.

New Jersey—General Services—Responsibilities shared between Acting Director, Division of Purchase and Property, Dept. of the Treasury, $130,000 (acting), and Director, Division of Property Management and Construction, Dept. of the Treasury, $120,000.

New Jersey—Mental Health—Responsibilities shared between Assistant Commissioner Lynn Kovich, Division of Mental Health Services, Dept. of Human Services, $128,000, and position of Deputy Commissioner Elizabeth Shea, Division of Developmental Disabilities, Dept. of Human Services, $128,000.

New Jersey—Social Services—Responsibilities shared between Commissioner, Department of Human Services, $141,000, and Commissioner, Department of Children and Families, $141,000.

New York—Licensing—Responsibilities shared between Commissioner, State Education Department, $212,500; Secretary of State, Department of State, $120,800.

New York—Mental Health—Responsibilities shared between Commissioner of Office of Mental Retardation and Developmental Disabilities, $136,000, and Commissioner of Office of Mental Health, $136,000.

Ohio—Finance—Responsibilities shared between Assistant Director of Budget and Management,$134,056, and Deputy Director, Office of Budget and Management, $95,014.

Ohio—Mental Health—Responsibilities shared between Director of Dept. of Mental Retardation and Developmental Disabilities, $126,089, and Director, Dept. of Mental Health, $116,397.

Ohio—Social Services—Responsibilities shared between Director, Dept. of Job and Family Services, $127,400; Superintendent of Dept. of Education, $192,504; Executive Director of Rehabilitation Services Commission, $108,992; and Director of Dept. of Aging, $119,808.

Oklahoma—Public Utility Regulation—Responsibilities shared between three Commissioners, $116,713, $114,713 and $114,713 and General Administrator, $104,000.

Pennsylvania—Fish and Wildlife—Responsibilities shared between Executive Director of (Fish), $30,054, and Executive Director (Game), $124,460.

Rhode Island—Higher Education—Serves a dual role as Commissioner of Higher Education and as the President of the Community College of Rhode Island.

Rhode Island—Social Services—Responsibilities shared between Commissioner, Office of Health and Human Services, $141,828, and Director of the Dept. of Human Services, $129,627, and reports to the Commissioner, Office of Health and Human Services.

South Carolina—Environmental protection—Responsibilities shared between Commissioner Catherine Templeton, $162,578 (BS), and Director Alvin Taylor, $129,877 (B).

South Carolina—Mental Health—Responsibilities shared between Director for Disabilities and Special Needs, $139,967, and Director of Mental Health, 166,692.

Texas—Elections Administration—Responsibilities shared between Secretary of State, $125,880; and Division Director, $111,100.

U.S. Virgin Islands—Community Affairs—Responsibilities for St. Thomas, $74,400; St. Croix, $76,500; St. John, $74,400.

Virginia—Highways—Responsibilities shared between Charles Kilpatrick, $198,450, and Gregory A. Whitley, $204,044.

Virginia—Public Utility Regulation—Functions shared between Communications, William Irby, $157,577; Energy Regulation, William F. Stephens, $157,538; Utility and Railroad Safety, Massoud Tahamtani, $154,629.

Wisconsin—Highways—Function currently split among various divisions, and the department is also currently going through a reorganization. The department secretary has overall responsibility.

Wyoming—Mental Health—Responsibilities shared between State Hospital, William Sexton, $150,000, and Life Resource Center, Richard Dunkley, $96,648.

(d) These individuals have voluntarily taken no salary or a reduced salary:

Alabama—Governor Bentley is not accepting a salary until the unemployment rate in Alabama drops.

Florida—Governor Rick Scott does not collect his salary.

Nevada—Higher Education—Chancellor Dan Klaich—elected to receive a lower wage than authorized.

New York—Governor Andrew Cuomo has reduced his salary by 5 percent.

New York—Commissioner and Chair of Empire State Development, Kenneth G. Adams, chooses to receive $1 in salary.

North Carolina—State Budget Officer Art Pope chose not to receive pay for performing the duties of State Budget Director.

Tennessee—Governor Haslam returns his salary to the state.

(e) In Maine, New Hampshire, Tennessee and West Virginia, the presidents (or speakers) of the Senate are next in line of succession to the governorship. In Tennessee and West Virginia, the speaker of the Senate bears the statutory title of lieutenant governor.

(f) The Pennsylvania entries with asterisks denote that 1.7 percent of the officeholders' salary is being repaid as part of the management pay freeze.

(g) A number of the employees receive a stipend for their length of service to the State (known as a longevity payment). This amount can vary significantly among employees and, depending on state turnover, can show dramatic changes in actual salaries from year to year.

(h) $63,654 Part-time.

(i) Lieutenant governor receives additional pay when serving as acting governor.

(j) This agency is now a self-directed state agency.

(k) The statutory salary for each of the four members of the Board of Elections is $25,000, including the two co-chairs, Douglas A. Kellner and James A. Walsh.

(l) The Rhode Island Economic Development Corporation is a quasi-public agency.

(m) Numerous licensing boards, too many to list.

(n) Varies by department.

(o) Solid waste is managed by the Rhode Island Resource Recovery Corporation (RIRRC). Although not a department of the state government, RIRRC is a public corporation and a component of the State of Rhode Island for financial reporting purposes. To be financially self-sufficient, the agency earns revenue through the sale of recyclable products, methane gas royalties and fees for its services.

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APPENDIX H

State Economic Timeline 2008-2015

STATE ECONOMIC TIMELINE 2008-2015

2008

April 9, 2008: Governor Paterson announces budget agreement with Legislature for FY2008-09. The enacted budget spends less than was proposed in the Executive Budget. Additionally, State agency operations spending growth will be limited to just 1 percent.

April 24, 2008. Governor Paterson asks the Legislature, Attorney General, Comptroller and Chief Judge to reduce their agency's operating costs by 3.35% over the course of 2008-09 fiscal year, similar to what he has requested of his executive agencies.

May 12, 2008: Division of Budget estimates projected General Fund deficits of $5.0B in 2009-10, $7.7B in 2010-11, and $8.8B in 2011-12.

July 29, 2008: Governor Paterson announces that the out-year projected deficits have increased to $6.4B in 2009-10, $9.3B in 2010-11, and $10.5B in 2011-12. He calls the Legislature to Albany for a special economic session.

July 30, 2008: Governor Paterson implements a 7% reduction in executive agency spending on top of the already-announced 3.35% reduction from April. Asks the Legislature to cut an additional $600M, which should close the current year deficit.

August 20, 2008. Governor and Legislature agree to a $1B savings package that eliminates the current year deficit and reduces the projected 2009-10 deficit to $5.4B.

September 5, 2008. Governor's budget call letter directs executive agencies to submit zero-growth budgets for 2009-10 fiscal year.

October 28, 2008. Division of Budget projects a current year deficit of $1.5B, with out-year deficits of $12.5B in 2009-10, $15.8B in 2010-11, and $17.2B in 2011-12.

December 16, 2008. Governor submits his executive budget for 2009-10, which eliminates current year deficit and projected 2009-10 deficit of $13.7B. Budget contains $9.5B in recurring spending cuts, $3.1B in recurring revenue, and $1.1B in one-shot revenue and spending actions. This reduces the out-year projections to a deficit of $1.8B in 2010-11 and $4.0B in 2011-12.

2009

January 29, 2009. Division of Budget announces projected out-year deficits of $2.0B in 2010-11, $4.2B in 2011-12, and $5.6B in 2012-13, based on the Governor's 30-day budget amendments for the 2009-10 executive budget.

March 29, 2009. Governor and Legislature agree to a balanced 2009-10 state budget that includes $6B in recurring spending cuts and General Fund spending growth of less than 1%.

May 15, 2009. Division of Budget projects out-year deficits, based on the current year enacted budget, of $2.2B in 2010-11, $8.8B in 2011-12, and $13.7B in 2012-13.

July 30, 2009. Division of Budget projects out-year deficits, based on the current year enacted budget, of $4.6B in 2010-11, $13.3B in 2011-12, and $18.2B in 2012-13.

September 14, 2009. Details of state workforce reduction initiative are announced: 1,089 people have voluntary left the state executive branch payroll in exchange for one-time lump sum severance payment. Vacated positions are not to be refilled, and an additional 2,263 positions are subject to attrition and/or defunded.

November 3, 2009. Division of Budget projects out-year deficits, based on the current year enacted budget, of $6.4B in 2010-11, $14.3B in 2011-12, and $19.1B in 2012-13.

November 5, 2009: Governor Paterson calls special session of Legislature to address current-year budget deficit of $3.2B and to reduce next year's projected deficit by $2B.

2010

January 19, 2010. Governor Paterson submits executive budget that closes projected $7.4B deficit for 2010-11, $5.5B of which comes from recurring spending reductions. General Fund state spending projected to increase by 0.9%. Out-year projected deficits are $6.3B in 2011-12, $10.5B in 2012-13, and $12.2B in 2013-14.

February 9, 2010. Governor submits his 30-day amendments to the 2010-11 executive budget proposal, which identify an additional $750M budget deficit, bringing the total projected deficit to $8.2B for 2010-11.

April 27, 2010. Governor announces furlough plan for executive branch employees.

May 28, 2010. Legislature passes early retirement incentive for state employees.

August 11, 2010. Budget passed by Legislature. Out-year deficits now projected as $8.2B in 2011-12, $13.5B 2012-13 and $15.6B in 2013-14. State operating expenditures projected to increase by 0.1% for the 2010-11 fiscal year.

November 9, 2010. Division of Budget projects out-year deficits of $9.0B in 2011-12, $14.6B in 2012-13, and $17.2B in 2013-14.

2011

February 1, 2011. Governor Cuomo's executive budget proposal. Closes projected $10B deficit in part with $8.9B in recurring spending reductions. All Funds spending to be reduced by $2.7B, General Fund spending to increase by less than 1.0%. In addition to recurring revenue and expenditure changes, out-year assumptions are changed with regard to spending growth, with reduces projected deficits to $2.3B in 2012-13, $2.5B in 2013-14, and $4.4B in 2014-15.

March 27, 2011. Governor and Legislature reach budget agreement. The Unified Court System absorbs a $170M budget reduction. State Operating Funds budget to grow by 2.9%, All Funds

spending to decrease by 2.1%. Projected out-year deficits of $2.4B in 2012-13, $2.8B in 2013-14, and $4.6B in 2014-15.

June 22, 2011. Governor announces new five-year collective bargaining agreement with CSEA to cover April 1, 2011 through March 31, 2016. Annual salary increases of 0%, 0%, 0%, 2%, and 2%. Contract contains Deficit Reduction Leave provisions (i.e., unpaid furlough days) and some protection from layoffs for represented employees.

October 17, 2011. After an initial contract agreement was voted down by the PEF membership, Governor announces new four-year collective bargaining agreement with PEF to cover April 1, 2011 through March 31, 2015. Annual salary increases of 0%, 0%, 0%, and 2%. Contract contains nine Deficit Reduction Leave days (i.e., furlough days) to be used in FY2011-12 and FY2012-13. These furlough days will be repaid over a 39-pay period time frame beginning in March 2015. Some protection from layoffs for represented employees are included.

November 22, 2011. Division of Budget delivers updated projection of out-year budget deficits of $3.2B in 2012-13, $3.3B in 2013-14, and $4.8B in 2014-15.

2012

January 17, 2012. Governor Cuomo's FY2012-13 executive budget proposal includes zero growth in total state agency spending. Education & health spending to increase by 4%, offset by flat or reduced budgets in other program areas. State Operating Funds expenditures to increase by 1.9%; All Funds spending to remain flat. Out-year deficits projected as $0.7B in FY2013-14, $3.0B in FY14-15, and $3.7B in FY2015-16.

January 31, 2012. Governor announces ratified collective bargaining agreement with Police Benevolent Association of NYS to cover April 1, 2005 through March 31, 2015. In addition to significant retroactive salary increases covering April 1, 2005 through March 31, 2010 , annual salary increases of 0%, 0%, 0%, and 2% for the period April 1, 2011 through March 31, 2015. Contract contains Deficit Reduction Leave provisions (i.e., unpaid furlough days) and some protection from layoffs for represented employees.

March 27, 2012. Governor and Legislature agree on FY2012-13 enacted budget. Total state agency spending to remain flat. General Fund spending to increase by 2.3%. All Funds

expenditures to remain flat. Tier VI pension reform enacted. Out-year deficits projected to be $1.0B in FY2013-14; $3.4B in 2014-15, and $4.1B in 2015-16.

June 18, 2012. Governor announces collective bargaining agreement with NYS Correction Officers and Police Benevolent Association of NYS to cover April 1, 2009 through March 31, 2016. In addition to significant retroactive salary increases covering April 1, 2009 through March 31, 2011, annual salary increases of 0%, 0%, 0%, 2%, and 2% for the period April 1, 2011 through March 31, 2016. Contract contains Deficit Reduction Leave provisions (i.e., unpaid furlough days) and some protection from layoffs for represented employees.

August 10, 2012. Division of Budget updates FY2012-13 financial plan: Out-year deficits projected to be $1.0B in FY2013-14, $3.6B in 2014-15, and $4.4B in 2015-16.

2013

January 22, 2013. Governor's 2013-14 executive budget proposal. Closes larger-than-expected deficit of $1.4B due to the effects of Hurricane Sandy in fall 2012. General Fund expenditures to remain flat; All Funds expenditures to increase by 0.6%, much of this increases is federal disaster assistance for Hurricane Sandy. Education spending to increase by 4.4%. Out-year budget gaps are projected as $2.0B in FY2014-15, $3.7B in FY2015-16, and $4.2B in FY2016-17.

June 4, 2013. Governor announces ratified collective bargaining agreement with United University Professionals to cover April 1, 2011 through March 31, 2016. Annual salary increases of 0%, 0%, 0%, 2%, and 2%. Contract contains Deficit Reduction Leave provisions (i.e., unpaid furlough days) and some protection from layoffs for represented employees.

March 21, 2013. Governor and Legislature agree on FY2013-14 enacted budget.

July 30, 2013. Comptroller's report on enacted budget and financial plan: "There's no doubt New York is in a better budget position now than it was a short time ago. New York State has made strides toward achieving equilibrium between recurring revenues and ongoing expenditures. The State Fiscal Year (SFY) 2013-14 Enacted Budget continues such steps and reduces out-year gaps, relative to earlier projections…."

June 19, 2013. Division of Budget projects FY2013-14 General Fund expenditures to increase by 3.7%; All Funds expenditures to increase by 5.6%.

November 25, 2013. Division of Budget releases updated financial plan. Projected out-year budget deficits of $1.7B in FY2014-15 and $2.9B in both FY2015-16 and FY2016-17.

2014

January 9, 2014. Governor Cuomo delivers State of the State speech. "When we were here three years ago, we were looking at a $10 billion deficit, it was historic. And it made us all quake in our boots. I know it did for me. **We have gone from a $10 billion deficit to a $2 billion surplus** in just three short years."

January 21, 2014. Governor releases proposed FY2014-15 executive budget. "…we have held spending below 2% for three years. We brought down the level of State debt at the same time. And **we have gone from a $10 billion deficit to a $2 billion surplus**….Three years a $10 billion deficit turned to a surplus, jobs are up, spending is down; unemployment is down in every region of the state of New York."

February 24, 2014. Division of Budget releases updated financial plan for FY2014-15. General Fund spending projected to grow 3.4%; All Funds expenditures to grow by 1.0%. Out-year budget surplus projections are: $0.2B in FY2015-16, $0.2B in FY2016-17, and $0.2B in FY2017-18.

March 29, 2014. Governor and Legislature agree to FY2014-15 enacted budget.

April 17, 2014. Governor announces collective bargaining agreement between the MTA and the Transit Workers Union to cover April 1, 2012 through March 31, 2016. Annual salary increases of 1%, 1%, 2%, 2%, and 2%.

June 16, 2014. Moody's Investor Service upgrades New York's credit rating on general obligation debt and personal income tax revenue bonds to Aa1, highest rating since 1964.

June 20, 2014. Fitch upgrades New York's credit rating to AA+ with stable outlook.

July 14, 2014. Comptroller's report on 14-15 enacted budget and financial plan: "New York has made significant budgetary improvements since the Great Recession to put it on solid financial footing, and the result is that the state's fiscal condition is the best it has been in years…New York State ended State Fiscal Year (SFY) 2013-14 in its strongest financial condition since the Great Recession… A broad-based, wealthy State economy; a long history of closing annual budget gaps, recently with more structurally balanced solutions; and the well-funded State pension system were identified as strengths that contributed to the [credit rating agency] upgrades."

July 17, 2014. Governor announces collective bargaining agreement between the LIRR and the United Transportation Union to cover April 1, 2010 through March 31, 2016. Total salary increase of 17% over 6.5 years. Includes some union concessions on employee health care and pension contributions.

July 23, 2014. Standard & Poor's upgrades New York's credit rating to AA+ with stable outlook.

November 24, 2014: Division of Budget releases mid-year financial plan update. **Current year surplus of $4.8B, to be deposited in an "undesignated reserve."** FY2015-16 projected deficit of $0.04B, surpluses of $0.3B in FY2016-17 and $0.6B in FY2017-18.

2015

January 1, 2015. Governor Cuomo inaugurated for a second term. "We restored the economy; we created 500,000 private sector jobs. This state today has 7.6 million jobs, more than have ever existed in the history of the State of New York. That is what we have today. **We turned a $10 billion deficit into a $5 billion surplus**."

January 21, 2015. Governor releases executive budget proposal for FY2015-16 simultaneously with his State of the State address.

March 29, 2015. Governor and Legislature agree to FY2015-16 budget. General Fund expenditures projected to grow by 6.6%; All Funds to grow by 3.1%. Out-year budget surpluses projected as $0.3B in FY2016-17; $1.7B in FY2017-18 and $1.6B in FY2018-19.

April 28, 2015. Comptroller's report on enacted budget: "In the sixth year of national economic recovery, New York State's short-term financial condition continues to improve. After closing deep projected budget gaps just a few years ago, the State now faces the unusual and more welcome challenge of how best to capitalize on an extraordinary inflow of one-time resources from monetary settlements – more than $6 billion in unforeseen receipts….The broad and vague statutory language creating the new Dedicated Infrastructure Investment Fund (DIIF) leaves open the possibility that the fund will be neither dedicated nor used primarily for infrastructure investment. Instead, the DIIF could effectively become an undesignated reserve fund to be used largely at the discretion of the Executive. Much of the settlement money could be spent with no required public reporting. In addition, the new fund does not incorporate all of the settlement resources, capturing $4.55 billion of the $6.29 billion in settlements received or expected to be received in SFY 2014-15 and beyond."

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APPENDIX I

Summary of Continuing Problem of Judicial Pay Disparity

THE CONTINUING PROBLEM OF JUDICIAL PAY DISPARITY

I

Since 1977, when the State assumed court funding responsibility and all judges of our major courts were added to the State payroll, there have been major problems with *inter*- and *intra*-court disparities in judicial compensation. These disparities have inspired dozens of lawsuits brought by individual judges and groups of judges, as well as several efforts in the Legislature, to produce a more rational judicial pay structure. Very few of these lawsuits have succeeded.[1] Even the successful lawsuits have had a limited impact, affecting only a small number of courts and judges. Few lawsuits have challenged the disparate salary levels between judges of different court levels, even though many judges of courts exercising limited jurisdiction earn higher salaries than judges of other courts exercising equal or greater jurisdiction.[2]

At the present time, the problem of pay disparity affects at least 355 judges, or about 28% of the judiciary.[3] The first quadrennial judicial salary commission, sitting in 2011, took no position on this issue. Its recommendations were limited to across-the-board percentage increases in judicial pay that had the effect of modestly aggravating existing disparities. This memorandum will summarize the history and scope of the pay disparity problem, including past efforts to remedy it.

II

In 1979, as part of the first legislatively-authorized judicial pay raise following enactment of the UCBA,[4] the Chief Administrative Judge was directed to study "whether unreasonable disparity exists in the compensation of judges of the same rank in different parts of the state."[5] Such a study was needed because the new judicial salary structure created by enactment of the UCBA, which mandated that all county-level and city-level judges become State employees at

[1] The most dramatic of these successes doubtless was the 1991 case of *Deutsch v. Crosson*. In this case, the Court held that the then existing statutory disparity in pay between Family Court Judges in Nassau County ($95,000) and Family Court Judges in New York City ($86,000) violated State and Federal constitutional equal protection imperatives.

[2] *E.g.*, The 50 District Court Judges in Nassau and Suffolk Counties earn $156,200 annually while enjoying jurisdiction over misdemeanors and small civil cases. By contrast, 59 County Court Judges across the State earn $152,500 (plus two others earn $154,300) while enjoying jurisdiction over all major felonies, small civil cases and, in many instances, Family Court and Surrogate's Court matters as well. Another illustration: the two full-time City Court Judges in the City of Long Beach, in Nassau County, earn $150,600, more than 3.5% less than the neighboring District Court Judges although they all exercise exactly the same jurisdiction.

[3] *See* Attachment I for the current judicial pay schedule. Even a cursory examination of this schedule will reveal the breadth of New York's pay parity problems.

[4] L. 1976, c. 966 [directing State assumption of the costs of operating the courts in New York, costs that, theretofore, had been borne by county and city governments].

[5] L. 1979, c. 55, §4.

salary levels fixed by local governments prior to April 1, 1977, lacked logic or equity.[6] Salaries of judges of the same rank and responsibility varied greatly between localities, and sometimes even within the same locality.[7] For example, in Albany County, County Court Judges were paid higher salaries than their Family and Surrogate's Court colleagues. In neighboring Rensselaer, Saratoga and Schenectady Counties, all the County Court Judges earned significantly less than their Albany counterparts. In Dutchess County, a short distance south, the Surrogate was paid considerably more than the County and Family Court Judges. To the north, county-level judges in Clinton County were paid more than all other county-level judges throughout the entire Fourth Judicial District, including judges of far more populous counties like Saratoga and Schenectady.[8] Indeed, Clinton County's judges were paid more than all the county-level judges in Onondaga County, which includes Syracuse, the State's fifth largest city.

The City Courts outside New York City also had their share of salary disparities.[9] For example, a Judge of the Utica City Court earned $38,000, while a Judge of the Buffalo City Court — a significantly larger venue with an arguably higher cost of living — earned only $32,000. Likewise, a Rochester City Court Judge earned $33,900, while a Judge of the Syracuse City Court earned $33,280. Even more dramatically, the City Judges of White Plains and Yonkers, cities much smaller than Buffalo and Rochester, earned $40,500 and $41,000, respectively.[10]

In the face of these and many other salary anomalies, the Chief Administrative Judge's Report, published in December 1979, recommended amendment of the Constitution to effectuate a merger of the trial courts. Alternatively, it proposed equalizing the salaries of all county-level judges and New York City Civil and Criminal Court Judges with those of Justices of the Supreme Court – coupled with proportionate salary levels for judges of the remaining State-paid trial courts. The Legislature neither followed these recommendations nor otherwise undertook to

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[6] *See* [former] Judiciary Law §220(6)).

[7] These discrepancies were the result of local politics and local finances. When they bore court-funding responsibility, some localities were more generous with their judges; some less so. In some places, a higher salary was paid a judge because of the fortuity of his or her good political or personal connection to the local executive or legislature; and, conversely, where a local judge was out of favor, he or she might be paid a lesser salary than a judge of equal rank in a neighboring locality or even than another judge of his or her own locality. With enactment of the Unified Court Budget Act, these purely-local decisions became built into State law and bound the State Judiciary into the future.

[8] These disparities continue to the present day, notwithstanding that Clinton County's population is slightly more than 81,000 while Schenectady's is approximately 155,000 and Saratoga's is almost 224,000. *Source*: US Census 2013 Population Estimate.

[9] City Courts in New York have either full-time judges (*i.e.*, those who are not permitted to practice law on the side) or part-time judges (*i.e.*, those who are permitted to practice law), or a mixture of both. As part of the judicial pay raise enacted in 1984, disparities in the salaries of the part-time judges were eliminated as a uniform salary structure was adopted for them. *See* L. 1984, c. 986. No comparable adjustments were made in salaries of full-time judges, however. They saw only a uniform percentage increase, which, ironically, only had the effect of aggravating existing pay disparities.

[10] To be sure, some minimal effort was made in 1979, as part of the first pay raise received by judges following their becoming State-paid, to mitigate inherited salary disparities. Accordingly, a baseline minimum was fixed for the salaries of full-time City Court Judges. Even with this change, however, many City Court salaries remained wildly disparate.

rectify the pay disparity problem. Instead, it enacted two more straightforward percentage pay increases for judges, and called for further study of the pay parity issue.[11] In 1985, when salaries were next adjusted, the Legislature ignored the parity issue. In 1987, it commissioned a further study (the Jones (I) Commission), which called for full pay parity among judges of the major trial courts. That study, too, was filed away with no implementation.[12]

The Executive has been no more successful in finding a way to deal with the pay disparity problems. In late 1992, Governor Mario Cuomo established a Jones (II) Commission by executive order, with a direction to inquire into these problems. This Commission produced nothing more than the following recommendation:

> "[T]he Commission has determined [the pay disparity] issue to be complex, requiring detailed examination of many factors. Proper consideration of this subject would require extensive study and evaluation. For these reasons, this Commission has recommended that the issue of uniform compensation be studied [in the future by a continuing Temporary Commission on Judicial Compensation]." *See* Jones (II) Report, p. 12.

No study or Temporary Commission followed.

From 2005 through 2010, Chief Judges Kaye then Lippman repeatedly called for elimination of inappropriate *inter* and *intra* court pay disparities as part of general judicial salary reform proposals submitted to the Legislature. Specifically, they urged that mandatory salary minimums be established, as follows: (1) for County, Family and Surrogate Judges, 95% of a Supreme Court Justice's salary; (2) for NYC Civil and Criminal Court Judges, and District Court Judges, 93% of a Supreme Court Justice's salary; and (3) for City Court Judges, 90% of a Supreme Court Justice's salary.[13] These efforts have also been unsuccessful.[14]

History shows that judicial pay disparities have persisted for nearly four decades despite the Judiciary's reform efforts and a series of legislative and gubernatorial blue ribbon panels established for the express purpose of rectifying the problem.

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[11] *See* L. 1980, c. 881, §17.

[12] In the years since 1977, the Legislature acted frequently to convert part-time City Court judgeships to full-time. When doing so, the Legislature has almost invariably conferred upon the new judgeships (approximately 50-60 in number) the lowest full-time salary then being paid a City Court judge. The result is that there has been a proliferation of such judgeships being paid at the low end of the City Court salary spectrum. This has aggravated the disparity problem even further.

[13] *See* "New York State Unified Court System: Legislative Proposal to Adjust Judicial Compensation", 2005.

[14] Critically, there is no indication that this lack of success was the result of fears that curing pay disparities would be too costly. The fact is that the cost of curing judicial pay disparities in the manner proposed by Chief Judge Kaye's 2005 salary report would be approximately $4.5 million (based on present salary levels), although, in actuality, it is likely considerably less because of offsets associated with the fact that many of the judges affected by disparity serve for extended periods on other courts where their compensation is such that they actually earn salaries equal to or in excess of those necessary to correct for any pay disparity. Judiciary Law §224 [providing that judges on temporary assignment to a court the judges of which earn greater compensation than the assigned judge are entitled to that greater compensation for the duration of their temporary assignment].

SUBMISSION TO THE

2015 Commission on Legislative, Judicial and Executive Compensation

APPENDIX J

History of Judicial Salary Reform in New York

HISTORY OF JUDICIAL SALARY REFORM IN NEW YORK

New York State's Unified Court System consists of an appellate court of last resort, the Court of Appeals; two intermediate appellate courts, the Appellate Division of the Supreme Court, which sits in each of the State's four Judicial Departments, and the Appellate Term of the Supreme Court, which sits in the First, Second, Ninth, Tenth, Eleventh, Twelfth and Thirteenth Judicial Districts; and 11 separate trial courts, including the Supreme Court, the Court of Claims, the County Court[1], the Family Court, the Surrogate's Court, the New York City Civil Court, the New York City Criminal Court, the District Court, the City Courts outside of New York City and the Town and Village Justice Courts[2].

Prior to April 1, 1977, the State paid only the salaries of the judges of the Court of Appeals, the justices of the Appellate Division and the Appellate Term, the justices of the Supreme Court and the judges of the Court of Claims. Judges of the other courts were paid by local governments at salaries fixed by those local governments.

As of April 1, 1977, however, the State assumed responsibility for paying the full operational costs of all its courts except for the Town and Village Justice Courts. L. 1976, c. 966 [enacting section 220 of the Judiciary Law, constituting the Unified Court Budget Act ("UCBA")][3]. As a result, all judges who until then had been locally-paid, except those of the Justice Courts, became State employees and were transferred to the State payroll at the rates of pay they were receiving on the previous day. Judiciary Law §39(6)(a) [formerly Judiciary Law §220(6)(a)].

Since the Unified Court Budget Act took effect in 1977, the State has borne full responsibility for fixing levels of judicial compensation. Over the past 38 years, these levels have been adjusted six times by act of the Legislature, and a seventh time by action of a special salary commission established by the Legislature in 2010 and delegated authority periodically to study and revise judicial salaries[4].

The following summarizes these adjustments and the circumstances under which they came about; and describes other events of the past decades relevant to judicial salary reform.

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[1] The County Court also exercises intermediate appellate jurisdiction comparable to that of the Appellate Term in parts of the State in which the latter has not been established, *i.e.*, in the counties of the Third and Fourth Judicial Departments.

[2] *See* the accompanying materials for a description of the jurisdiction of each of these 11 trial courts and the qualifications of their judicial officers.

[3] *See* copy attached as Appendix A.

[4] Under the State Constitution, only the Legislature enjoys authority to adjust judicial compensation. *See* NY Const., Art. VI, §25(a) ["The compensation of [the State's judges] shall be established by law . . ."].

The Unified Court Budget Act

The UCBA provided that judges who formerly were locally-paid would become State-paid, effective April 1, 1977, at the rates of compensation to which they were entitled on March 31, 1977, while they were yet locally-employed[5]. Judiciary Law §39(6)(a) [formerly Judiciary Law §220(6)(a)]. Because, prior to 1977, some counties (and cities) had paid their judges higher rates of compensation than had others, the result was that, in the wake of the UCBA and State assumption of the Judiciary's funding, there was a significant degree of disparity in the salaries paid by the State to judges of the same court level[6]. This disparity has been the source of much litigation since 1980[7].

As to judges of the Court of Appeals, justices of the Supreme Court (including those of the Appellate Division and Appellate Term) and judges of the Court of Claims, all of whom had been State-paid before enactment of the UCBA[8], the UCBA had no impact upon their compensation. At the time, that compensation was uniform statewide within each court (except for comparatively small salary increments paid to the presiding judges for their administrative responsibilities).

The 1979 Judicial Pay Raise

The first pay raise for judges following the effective date of the UCBA was enacted in April of 1979. L. 1979, c. 55[9]. It was coupled with pay raises for legislators and high-ranking officials of the Executive Branch[10]. For the judges, the pay raise consisted of a series of

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[5] Actually, the UCBA was not the first instance of State involvement in the payment of compensation to county-level and city-level judges. Beginning in 1962, the State had conducted a program of financial assistance to local governments in the payment of compensation to their judges. *See* [former] Judiciary Law §34 (subsequently renumbered as section 34-a and, ultimately, repealed in 1979). Under this program, counties and cities originally received fixed subsidies depending upon their size and, in some instances, the number of their judges. Later, the subsidies were keyed to local maintenance of minimum salaries for county-level and city-level judges. L. 1975, c. 150, §8.

[6] *See* accompanying materials, including a chart (see Appendix B) showing *inter* and *intra*-court pay disparities as of April 1, 1977 and as of today, and "The Continuing Problems of Judicial Pay Disparity".

[7] Judges have sued, claiming that equal protection requires that their salaries be adjusted to match those of other judges of the same court sitting in another venue. These lawsuits have often been unavailing although, occasionally, they are successful. Perhaps the most impactful and best known of them was *Deutsch v. Crosson*, a 1991 case brought by Family Court judges in New York City, arguing that the Constitution required that their salaries – then several thousand dollars less than those of Family Court judges in neighboring Nassau County – be increased to equal the latter. The trial court agreed and Family Court salaries were adjusted accordingly (as a consequence of which, these salaries now equal those of Supreme Court justices – with whom Nassau County Family Court judges have long enjoyed pay parity).

[8] Except that the Judiciary Law had long required counties to share in the burden of compensating justices of the Supreme Court. *See* [former] Judiciary Law §§142-146 (establishing a baseline salary to be paid by the State to justices of the Supreme Court and providing for supplemental compensation to be paid by localities to such justices).

[9] *See* copy attached as Appendix C.

[10] The reference to "high-ranking officials of the Executive Branch" is to the State Attorney General, the State Comptroller and those commissioners, chairs, directors and executive directors of Executive agencies, commissions and boards whose salaries are prescribed in section 169 of the Executive Law. Hereafter, in this report, this group is referred to as the "statewide executive officials and section 169 officers."

percentage increases along with establishment of minimum salaries for county-level and full-time city-level judges[11]. The percentage increases were approximately 7%, effective retroactively to October 1, 1978; 7%, effective October 1, 1979; and approximately 3.39%, effective October 1, 1980. These percentages had been part of recommendations made earlier by an *Ad Hoc* Panel on Executive, Legislative and Judicial Compensation established by then-Governor Hugh Carey. *See McKinney's Laws of New York*, 1979, p. 1764 (Gov.'s App. Msg. for L. 1979, c. 55). Why these particular percentages, and why three instalments over two years is unclear. The *Ad Hoc* Panel's report is not now available in print[12].

The 1979 pay raise did not directly tackle the issue of judicial pay disparity[13]. In what quickly would become a pattern for future legislatures, the enabling statute paid lip service to the issue by coupling the straight percentage increases to a direction that the disparity issue be studied, and that a report with recommendations be produced for the Governor, the Legislature and the Chief Judge of the State. In 1979, the Chief Administrative Judge was made responsible for that study and that report:

> "The chief administrator of the courts shall investigate whether unreasonable disparity exists in the compensation of judges of the same rank in different parts of the state. On or before December first, nineteen hundred seventy-nine, the chief administrator shall prepare and transmit to the legislature, [etc.] . . . a report of his findings, together with appropriate legislative recommendations to eliminate unreasonable disparity, if any, by April first, nineteen hundred eighty-two." L. 1979, c. 55, §4.

The Evans Report

A copy of Chief Administrative Judge Herbert Evans' report is attached as Appendix E. This report concluded that there were glaring inconsistencies in the salary levels of judges of

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[11] All of the judges of the State-paid courts serve full-time except for certain designated judges of the City Courts outside New York City. Today, of the 170 judges of the 61 City Courts across the State, 118 are full-time and 52 are part-time.

[12] Chapter 55 and its inaugural judicial pay raise also followed in the wake of the December 1978 report of the State Commission on Legislative and Judicial Salaries. *See* Appendix D. This Commission, known informally as the Hand Commission after its chair, Westchester banker James Hand, was a continuing body that had been established by the Legislature in 1972 to provide ongoing review of the salaries paid judges and members of the Legislature. L. 1972, c. 875. In its 1978 report, the Commission recommended a 25% pay increase for judges and members of the Legislature, to offset increases in the cost of living between 1973 and 1978.

[13] The establishment of minimum salaries for county-level and city-level judges did, however, have the effect of reducing, to a small extent, the disparity between salaries of judges of the same court level. First, taking county-level judges as an example, all such judges earning a salary below $36,000 as of the State takeover of court funding were deemed to be earning that salary as of September 30, 1979 and their salaries, effective October 1, 1979, were calculated by applying the 7% increase to $36,000. Second, those judges then received an extra pay increase amounting to approximately 10.38% on April 1, 1979. Also receiving extra pay increases, albeit in proportionately smaller amounts, were judges whose salaries after the October 1, 1979 pay increase were less than $42,520 (the amount judges who received the 10.38% were to receive as of April 1, 1979). The result of these adjustments was that the magnitude of the disparity between top and bottom salaries for judges of the same courts was somewhat diminished. No effort was made, however, to establish relationships between salaries that reflected caseload levels, population, demographics or other rational criteria.

county-level and city-level courts; that those salary levels had never been subject to State standards; that the compensation disparities were the result of the former system of court funding by local government; and that continuation of these disparities after the UCBA was "neither necessary, desirable nor equitable." *See* Evans' Report, pp. 6-7. These conclusions were accompanied by a recommendation that the Constitution be amended to effectuate a trial court merger, which, it was suggested, would solve most of the judicial pay disparity problem[14]. Absent trial court merger, Judge Evans wrote, the salaries of County, Surrogate's and Family Court judges, along with those of the New York City Civil and Criminal Court judges, should for the time being be equated with those of justices of the Supreme Court; proportionate salary schedules should be fixed for the judges of the other State-paid trial courts; prior to April 1, 1982, the Legislature should determine what differential in salary should exist between county-level judges and justices of the Supreme Court; and "the Legislature should provide by law for automatic adjustments in judicial salaries related to changes in the cost of living." *Id.* at p. 7.

The 1980 Judicial Pay Raise

The recommendations of the Evans' Report, which was published on December 1, 1979, were not followed – although the Legislature, in fairly short order, gave the judges another pay raise. This pay raise, too, was coupled with pay raises for legislators and statewide executive officials and section 169 officers. L. 1980, c. 881[15]. It was enacted during a special session of the Legislature held in the fall of 1980[16] and, for the judges, consisted of a straight 5% increase in salaries, effective January 1, 1981, to be followed by a straight 7% increase, effective January 1, 1982. *Id*., §14. Also part of the legislation was introduction of a $2,000 pay increment for administrative judges and provision for compensating judges assigned to travel status at the rates of pay earned by judges in the court of assignment where the latter were more highly paid. *Id.*, §§15 and 16[17].

The 1980 legislation, like its 1979 predecessor, recognized that the judicial salary schedule was unfair and filled with disparities. In an effort to address this fairness issue, the legislation called for another study – this one to be conducted by a Temporary State Commission on Judicial Compensation. This Commission was to have seven members appointed by the Governor and the legislative leadership. It was specifically charged:

> "to examine, evaluate and make recommendations with respect to (a) the issue of parity of compensation between judges and justices in the unified court system, and (b) determining adequate levels of compensation for such judges and justices.
>
> "Such commission shall review with particular care whether fairness dictates that judges or justices in the unified court system performing similar

[14] To this day, trial court merger, which involves the abolition of some or all of the State's existing trial courts and absorption of their judges and jurisdiction into Supreme Court, remains a politically elusive ideal.
[15] *See* copy attached as Appendix F.
[16] This special session was not limited to salary matters, but dealt with a range of subjects of State interest.
[17] Originally adopted as Unconsolidated Laws, these sections have since been incorporated into the Judiciary Law. *See* Judiciary Law §§223 and 224.

duties be compensated uniformly. In addition, the commission shall examine the adequacy of pay received by the judiciary taking into account the overall economic climate, the levels of salaries received by other professionals in government and private enterprise and the ability of the state to fund increases in compensation."

L. 1980, c. 881, §17.

The Commission was required to publish its report and recommendations by September 1, 1982.

The Dentzer Report

The Temporary State Commission on Judicial Compensation was chaired by William T. Dentzer, Jr., Chair and Chief Executive Officer of the Depository Trust Company[18]. Its 1982 report made several recommendations for adjustment in judicial pay, effective January 1, 1983[19]. The Commission based these recommendations upon two main assumptions. First, that in determining appropriate levels of compensation, New York should embrace a "competitive adequacy" standard. That is:

"the judgment as to what level of pay is adequate should be based on whether a reasonable supply of well-qualified attorneys will make themselves available to become or remain judges in the courts concerned. The lowest pay which produces an adequate supply of well-qualified candidates for the various courts is the only pay level which is fair to State taxpayers; any higher pay would require unnecessarily high taxes."

Dentzer Report, p. 5.

Second, that there are significant differences in the cost of living in various areas of the State; and that it makes much more sense to adjust the salaries of judges who reside where it is more expensive to live to reflect that fact, rather than to establish a single salary for each office, which, while perhaps adequate in some parts of the State, might be inadequate or excessive elsewhere in the State[20].

The Commission's principal recommendation was for establishment of a two-tiered salary schedule for each judicial office, the first tier to represent the base salary for the office and the second to be the base salary increased by 16%. All judges and justices of courts outside of New York City, and outside of Westchester, Nassau and Suffolk Counties, would receive the

[18] The other members of the Temporary State Commission included: H. Douglas Barclay (Chair of the State Senate Judiciary Committee), Charles Desmond (former Chief Judge of the Court of Appeals), D. Clinton Dominick (former Chair of the Temporary State Commission on the State Court System), Bertrand R. Gelfand (Bronx County Surrogate), Anthony Palermo (former President of the New York State Bar Association) and Deborah K. Smith (Manager, Human Resources for the Business System Group, Xerox Corporation).

[19] A copy of the Dentzer Report is attached as Appendix G.

[20] In making its recommendations, the Dentzer Commission was aided by surveys conducted by consulting firms to assess the average compensation of litigators and the cost of living in various areas of the State.

base salary, which, for justices of the Supreme Court, would reflect a 19.7% increase over their January 1, 1982 salaries. The rest of the judges and justices (*i.e.*, those in the New York City metropolitan area and on Long Island) would receive this new base salary plus a locational increment of 16% (or, for justices of the Supreme Court, an overall increase of nearly 39% over their January 1, 1982 salaries)[21].

The Commission also recommended increases in the salaries of the State's appellate judges, ranging from a 20% increase for the Associate Judges of the Court of Appeals to a 17.7% increase for the Associate Justices of the Appellate Divisions (boosted to a 35% increase for those justices eligible for the locational adjustment). Just why these particular percentages were selected is not clear.

The Commission did not attempt to remedy the problems of pay disparity beyond introducing the locational pay differential. In proposing salaries for the judges of each level of court, it did no more than set out a minimum salary and a minimum salary plus 16%.

The Commission was lukewarm on the subject of establishing a procedure for periodic judicial pay review and adjustment. It eschewed statutory linkage to some form of inflation index, believing that the high inflation of the times was likely to end and not soon be repeated, and that introduction of such a procedure would only stimulate costly efforts to index other public sector salaries.

Finally, the Commission suggested that, should the State not be disposed to follow its recommendations for salary reform, consideration should be given to improving judicial benefit programs as an indirect way of improving the judicial compensation package[22].

The 1984-85 Judicial Pay Raise

The Dentzer Report and its recommendations were not implemented. Consequently, there were no changes in the judicial salary structure in 1983 or 1984. Nor did the Legislature find occasion to revise its own salary structure or that of the statewide executive officials and section 169 officers. In December 1984, however, the Legislature did enact a measure providing pay increases for judges and legislators, effective January 1, 1985, and for statewide executive

[21] The percentage increases for judges of the lower trial courts were somewhat different, although all those working in New York City, the Island and Westchester County would enjoy the 16% locational adjustment. For judges of the County, Surrogate's and Family Courts earning the minimum salary for their respective positions, the amount of the increase would be about 24%. For judges of the New York City Civil and Criminal Courts, it would be only about 13.5%. For judges of the District Courts, about 18%; and for full-time judges of the upstate City Courts, about 13.8%.

[22] One suggested improvement was that the State's retirement statutes be modified to provide enhanced retirement benefits for judges who retire from the bench after serving only one term. This, it was thought, would encourage able lawyers to consider capping their careers with a single term on the bench.

officials and section 169 officers, effective retroactively to July 1, 1984[23]. L. 1984, c. 986[24]. The increase for the latter was especially noteworthy because it included a provision linking pay increases for certain Executive Branch officials (*i.e.*, section 169 officers) during the 1985 and 1986 State fiscal years to pay increases received by managerial/confidential employees in the Executive Branch during those years. *See* Executive Law §169(2)(c)[25].

For most trial judges and for Associate Justices of the Appellate Divisions, chapter 986 provided between 24% and 27% increases in salary. For Associate Judges of the Court of Appeals, the increase was somewhat less – only about 14% – likely because of an artificial cap set by the Governor's salary. Once again, the rationale for the percentages applied has been lost to memory. The evidence suggests, however, that these percentages were essentially in keeping with the State's practice during the first decade following enactment of the UCBA of approximately pegging judicial salary growth to that of the Consumer Price Index.

No effort was undertaken to correct judicial salary disparities among judges of the major trial courts. There were neither appropriate adjustments in the salaries of affected judges nor legislative directions to further study the issue[26].

The 1987 Judicial Pay Raise

In the summer of 1987, responding to considerable pressure brought by rank and file legislators, particularly those from New York City, the Legislature acted to increase the salaries of its members, those of statewide executive officials and section 169 officers and those of judges. L. 1987, c. 263[27]. The New York City legislative delegation was especially agitated at the time because of sizable pay increases then being adopted for members of the New York City Council, City Commissioners and the City's five District Attorneys[28]. Accordingly, the pay raises enacted by the Legislature were quite significant.

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[23] Interestingly, while many have come to think of the practice of legislating pay raises for high level government officials during the months of November and December following legislative elections as a time-honored way for the Legislature to minimize political flack, the fact is that only three of the six statutes conferring pay raises upon judges enacted since the UCBA became effective in 1977 were enacted in such fashion (*see* L. 1980, c. 881; L. 1984, c. 986; and L. 1998, c. 630). The other three were enacted during the spring or summer of the year (*see* L. 1979, c. 55 [enacted April, 1979]; L. 1987, c. 263 [enacted July, 1987]; and L. 1993, c. 60 [enacted April, 1993]).

[24] *See* copy attached as Appendix H.

[25] In the years following 1984, section 169 was amended several times to continue this linkage (*i.e.*, for the 1987, 1988 and 1993 State fiscal years). In 1998, however, as part of the pay raise enacted in that year for judges, members of the Legislature and statewide executive officials and section 169 officers, the linkage was discontinued. L. 1998, c. 630, §6.

[26] A modest effort was undertaken, however, at the level of the upstate City Courts. The judges of those courts had long argued that they should enjoy salary parity with judges of the District Courts. Chapter 986 gave part-time City Court judges that parity. Full-time judges, while not reaping exactly the same benefit, did see the distance between their salaries and those of District Court judges reduced somewhat; and, at the same time, they were told that full parity for them would be put into effect the next time salaries were adjusted (a promise that ultimately was not kept).

[27] *See* copy attached as Appendix I.

[28] In the past, it was frequently the case that New York City's changes in the salaries of its legislators and high level officials precipitated State legislative action to change the salaries of comparable State-level officials. Recently, however, this has not been the case. *See* accompanying materials for a comparison of representative salary levels between the City and the State.

For the Judiciary, chapter 263 provided pay raises of 24% for Associate Judges of the Court of Appeals, of 15.9% for justices of the Supreme Court, of up to 20.6% for county-level judges, of 21% for New York City Civil and Criminal Court judges, and of 18.3% for full-time City Court judges upstate.

Not content with providing pay raises alone, the Legislature also directed that another Temporary State Commission be established to inquire into salary matters – this time not merely those of the Judiciary, as had been the mandate of the Dentzer Commission back in 1982, but those of the statewide executive officials and section 169 officers and members of the Legislature as well. L. 1987, c. 263, §17. In relevant part, this new Commission's[29] mandate was to:

> "examine the adequacy of pay received by the governor, lieutenant governor, attorney general, comptroller, those state officers referred to in section one hundred sixty-nine of the executive law, members of the legislature and judges and justices of the state-paid courts of the unified court system taking into account the overall economic climate, the levels of salaries received by other professionals in government and private enterprise and the ability of the state to fund increases in compensation. The commission also shall formulate a systematic and appropriate mechanism by which the state shall regularly review and adjust levels of pay received by the governor, lieutenant governor, attorney general, comptroller, those state officers referred to in section one hundred sixty-nine of the executive law, members of the legislature and judges and justices of the state-paid courts of the unified court system."

The Commission was directed to make its first report by the beginning of February, 1988; and authorized to make further reports thereafter, as well.

The First Jones ("Jones (I)") Report

Referred to as the Jones Report, after Judge Hugh R. Jones, the Chair of the Temporary State Commission on Executive, Legislative and Judicial Compensation mandated by chapter 263 of the Laws of 1987, the Commission's report was published in June, 1988[30]. The report (*see* copy attached as Appendix J) found that:

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[29] The full name of the Commission was to be the Temporary State Commission on Executive, Legislative and Judicial Compensation. Its membership was to consist of representatives of the Governor, the legislative leadership and the Chief Judge of the Court of Appeals.

[30] The other members of the Jones (I) Commission included: Barbara Blum (former Commissioner of the New York State Department of Social Services), Juanita M. Crabb (Mayor of Binghamton), Paul Elisha (Executive Director of New York State Common Cause), Dr. Wilbert A. Tatum (Editor, *Amsterdam News*), Cornelius McDougald (former Commissioner of the New York City Commission on Human Rights), Fern Schair Sussman (Executive Director of the Association of the Bar of the City of New York), Van C. Campbell (Vice-Cahairman of the Corning Glass Works), William Ellinghaus (member, New York State Emergency Financial Control Board), Victor Gotbaum (former Executive Director of DC-37, AFSCME, AFL-CIO), Ruth G. Weintraub (Dean *Emerita*, Hunter College),

• Inflation over the past 20 years had significantly eroded the purchasing power of the salaries of the statewide executive officials and section 169 officers and of State judges. Legislators, too, had seen the value of their salaries diminish, although somewhat less so. Jones (I) Report, p. 4.

• Significant salary disparities existed among judges. *Id*.

• Fringe benefits enjoyed by State officials (including judges) were competitive with those provided by other state governments and the private sector. *Id.*

• New York State officials were compensated at higher levels than their counterparts in other states, but not as well as public officials in the Federal government and in New York City – except that some State judges (*i.e.*, judges of the State Court of Appeals and justices of the State Supreme Court) were then (*viz*., in 1988) more highly compensated than Federal judges[31]. *Id.*

• New York State government officials were compensated at levels significantly lower than those of executives and other professionals in the private sector. In fact, it was found that a State judge could multiply his or her salary two, three or four times, or more, by leaving the bench to take advantage of opportunities in private practice or in the corporate sector. *Id.*

On the basis of these findings, the Jones (I) Commission made a series of recommendations for salary reform in the three branches of State government. For the Judiciary, it specifically recommended: (1) a seven-year program of salary adjustment so that salary levels would reflect 1967 values[32]; and (2) a three-year program of adjustment of salaries so that all trial judges would enjoy full pay parity with justices of the State Supreme Court[33]. Jones (I) Report, p. 5. The Jones Commission also recommended that judicial compensation be among the subjects of inquiry of a *permanent* State commission on compensation. This commission, the

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Robert B. McKay (former Dean, New York University Law School) and Louis L. Levine (Corporate Vice President for Public and Governmental Affairs for Empire Blue Cross and Blue Shield).

[31] A relatively short-lived situation. Within two years, the salaries of Federal judges would eclipse those of New York State judges. *See* the accompanying materials for a comparison of the salaries received by New York's justices of the Supreme Court with those received by Federal District Court judges over the period between 1977 and the present.

[32] In justifying this recommendation, the Jones (I) Commission wrote:

> "One legitimate way to measure the adequacy of state salaries is to examine them historically. Here, considering the impact of inflation, we can determine whether state employees are earning the same in real dollars as they had previously. Here, we can assess the ability of state employees to maintain a certain standard of living for themselves and their families. Such a measure of adequacy is . . . only fair and appropriate . . ." Report of the State of New York Temporary Commission on Executive, Legislative and Judicial Compensation, 6/29/1988, p. 12.

The year 1967 was viewed as a kind of base year, *viz*., the last year before which inflation began seriously to erode the real value of the dollar, and as an appropriate point from which to measure decline in the value of the judicial wage.

[33] City Court judges outside of New York City were excluded from this recommendation; but the Commission did recommend that those City Court judges who were full-time should be given pay parity among themselves over three years. *See* Jones (I) Report, p. 5.

members of which would be appointed by the Governor, the legislative leadership and the Chief Judge of the Court of Appeals, would be charged to review and periodically adjust the salary levels of high-level State government officials[34]. It also would be responsible for development of a special salary system for the Judiciary that: (1) "rewards longevity on the court so that it can retain the services of its more experienced judges and justices"; and (2) includes "salary differentials for judges that [are] sensitive to the extraordinary costs of living in certain geographical areas of the state." *Id*., p. 6. Commission recommendations for adjustment would take effect within 90 days unless rejected by the Governor and the Legislature. *Id*.

The Second Jones ("Jones (II)") Report

For four years following publication of the first Jones Report, no steps were taken to give effect to its recommendations relating to the Judiciary. Nor were further judicial pay raises enacted. This was the longest pay freeze experienced by judges since the UCBA took effect in 1977.

Late in 1992, then-Governor Mario Cuomo directed establishment of yet another temporary state commission[35], this one to focus exclusively on the Judiciary and to study and recommend with respect to:

• existing levels of compensation for judges and justices of the Unified Court System and their adequacy, "taking into account the general economic condition of the State and other benefits currently available to the judiciary";

• whether "judges and justices performing the same or similar duties should be compensated uniformly";

• establishment of "a permanent process to ensure that judicial pay levels remain adequate to retain and attract a supply of good candidates for all courts in the State at the minimum total cost to the public"; and

• methods to "generate revenues to finance judicial pay increases in the future, including productivity and cost-savings measures and revenue generation."

Executive Order #161, 11/18/1992

[34] In conducting this review, the commission would consider "changes in the cost of living, the general economic condition of the state, the general content and context of state collective bargaining agreements, modifications in the responsibilities of particular agencies or officials, changes in state priorities and the degree of difficulty that the state has experienced in recruiting for particular governmental positions." Jones (I) Report, p. 6.

[35] This commission was established by executive order and did not formally have the imprimatur of the State Legislature. 9A NYCRR §4.161 (*see* copy attached as Appendix K).

The members of this commission, which also has come to be known as the Jones Commission – albeit the "Jones (II) Commission", after its chair, James R. Jones, chair of the American Stock Exchange – were all to be designated by the Governor[36].

The Jones (II) Commission made its final report on January 15, 1993. This report (*see* copy attached as Appendix L) called for adjustment of the salaries of all State-paid trial and appellate judges and justices in amounts varying from 8.7% for Associate Judges of the Court of Appeals, to 18.9% for justices of the Supreme Court, to up to 20.7% for county-level judges, to 15.4% for full-time City Court judges outside New York City and Housing judges of the Civil Court[37]. The adjustments were to take place in four stages over a period of 18 months, beginning April 1, 1993. Jones (II) Report, pp. 9-10. Further, the report suggested additional study of the pay parity issue by a statutory Temporary Commission on Judicial Compensation[38]; establishment of an executive director "to direct studies on other issues of importance to the Judiciary which may require legislative or policy changes"[39]; creation of an independent audit commission "to perform management audits of OCA and the Courts and to provide the public with audit reports"[40]; and adoption of a host of revenue and productivity proposals, ranging from increase in the biennial attorney registration fee and creation of new litigation-related fees to elimination of mandatory sequestration of deliberating juries in criminal cases, expansion in the use of electronic recording of court proceedings, restoration of the Misdemeanor Trial Law, greater use of Judicial Hearing Officers and other substantive initiatives[41].

Not at all clear was the rationale for the particular salary adjustments settled upon by the Commission. Its report does not recite any justification for those adjustments other than to acknowledge that "since 1987, inflation has seriously eroded the value of judges' salaries; that the current levels of judicial compensation are therefore inadequate; and, that prompt remedial

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[36] In addition to chair James R. Jones, the Commission's members included: Richard J. Bartlett (former Chief Administrative Judge), Tom Lewis (former Director of the Governor's Office of Management and Productivity), Nancy Mackey Louden (former President, New York State Women's Bar Association) and James F. Niehoff (former Associate Justice, Appellate Division, Second Judicial Department).

[37] Housing judges serve in the New York City Civil Court, presiding over landlord/tenant matters. Technically, they are quasi-judicial officers whose positions and service have been authorized by statute. NYC Civil Court Act §110(e). Historically, however, beginning in the 1980s, the Legislature has lumped them in with State-paid judges and justices authorized by Article VI of the State Constitution whenever judicial salaries have been adjusted.

[38] In making this recommendation, the Jones (II) Commission wrote that establishment of such an ongoing commission "would ensure reasonable and regular salary adjustments; would eliminate the uncertainty and confusion that results from large catch-up adjustments; and would ensure the integrity and independence of the Judiciary." As conceived by the Jones (II) Commission, the statutory commission would consist of members designated by the Governor, the legislative leadership and the Chief Judge. It would make "judicial compensation *and related recommendations*" to the Legislature and the Governor by November 15th of each year, the idea being that they might thereby be available for consideration in the context of the State Budget for the ensuing State fiscal year.

[39] Cited as examples were the matters of geographic pay differentials, court merger and parity, pay disparity and judicial pensions and other benefits requiring actuarial analysis. Jones (II) Report, p. 13.

[40] The Report described this recommendation as a means of providing "the most cost-effective approach to attaining the goals of independent management, performance and revenue audits of the courts." Jones (II) Report, pp. 13-14. It would ensure that the Temporary Commission on Judicial Compensation would be provided "with the body of reliable data necessary for the full understanding of the structure, operations and finances of the Unified Court System as requested by the Governor, Legislature, Comptroller, the bar and the citizenry." *Id.*

[41] *See* Jones (II) Report, pp. 15-17, for a complete listing of the revenue and productivity proposals.

action should be taken." Jones (II) Report, p. 9. Ironically, the salaries recommended by the Commission did not reflect inflation's effect since the Judiciary's last pay raise[42]. Moreover, the Commission did not consider the principal recommendation of the Jones (I) Report, *viz*., that judicial salaries be adjusted to reflect inflationary effects since 1967. It did, however, expressly reject the notion that somehow State and Federal judicial salaries were linked. *Id*., p. 8.

Interestingly, although the Governor's charge to the Commission invited its consideration of "[m]ethods to generate revenues to finance judicial pay increases . . .", the Commission Report stressed the members' belief "that the Judiciary is a separate, independent branch of government and . . . that the salaries of judges *should not* be contingent upon adoption of specific proposals for fee or other revenue increases." Jones (II) Report, p. 3. At the same time, however, the Commission proposed a host of revenue-raising proposals[43].

The 1993-94 Judicial Pay Raises

In the spring of 1993, the Legislature enacted a new pay schedule for State-paid judges and justices[44]. L. 1993, c. 60[45]. With only slight changes in the salaries of New York City Civil and Criminal Court judges and District Court judges on Long Island, the new pay schedule was precisely the one that had been recommended by the Jones (II) Commission[46].

Although most judges welcomed the 1993 pay raise, it was thought by some to be very unfair. In particular, judges of the upstate City Courts and Housing judges of the New York City Civil Court quickly complained of their treatment under chapter 60. They pointed to the fact that while judges of the other trial courts affected by the pay raises were seeing their salaries increased by nearly 19% or more, City Court judges and Housing judges were seeing increases of only about 15%.

No explanation for this disparate treatment had been offered in the Jones (II) Report. Upon inquiry with the Commission staff, undertaken at the behest of the City Court Judges Association, OCA officials were advised that the reason for the disparity lay in the Commission's (mistaken) belief that City Court judges and Housing judges were, essentially,

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[42] For example, were the salary of a justice of the Supreme Court to have been adjusted to reflect inflation since October 1, 1987 (as measured by growth in the Consumer Price Index), the Commission would have proposed a salary figure of approximately $117,500, rather than $113,000.

[43] The Commission justified inclusion of these proposals in the following way: "[Our] mandate is not interpreted as implying that the Judiciary must generate revenues to finance judicial salary increases; but rather that for the benefit of the State as a whole and like the two other branches of government, the Judiciary must seek to explore revenue increases and productivity improvements to finance or reduce the cost of government." Jones (II), p. 3.

[44] Of note is the fact that this enactment benefitted judges alone. In a conspicuous departure from the practice followed since enactment of the UCBA, no provision was made to augment the pay of legislators or section 169 officers. Why the latter were excluded is unclear although some have theorized that legislators and section 169 officers would have received raises after the 1994 gubernatorial/legislative elections had Mario Cuomo been re-elected. He was not and, ultimately, pay raises for these employees never materialized.

[45] *See* copy attached as Appendix M.

[46] Also, as had been recommended by the Jones (II) Commission, chapter 60 implemented the judicial pay raise in four instalments spread over 18 months. Thus, judges received increases on April 1, 1993, October 1, 1993, April 1, 1994 and October 1, 1994.

very low-level judges, the nature of whose adjudicative responsibilities required little in the way of legal acumen[47].

Even before enactment of the chapter 60 pay raise, the Judiciary began to urge the Legislature that, if the recommendations of the Jones (II) Commission were to provide the blueprint for a judicial salary increase, there should be a departure from those recommendations at least insofar as they applied to City Court judges and Housing judges[48]. The effort was unavailing and those recommendations were enacted without change. In 1994, however, after enactment of chapter 60, a further effort was made to revise these salaries to reflect more equitable treatment in light of what other trial judges received. This effort was successful, with the result that the Legislature enacted legislation boosting the pay raises received by City Court judges and Housing judges to be commensurate with those received by the other judges under chapter 60. L. 1994, c. 518[49].

The Judiciary Commission of 1997-98

For four years following the judicial pay raises of 1992-93, there was no further State action to adjust judicial compensation. But, thereafter, in the autumn of 1997, then-Chief Judge Judith Kaye established her own special Commission to Review the Compensation of New York State Judges[50]. In her charge to the Commission, the Chief Judge wrote:

> "Judges are entitled, on an ongoing basis, to fair and adequate pay for the critically important work they perform. The failure of judicial salaries to keep pace with changing economic conditions constitutes a major problem for the future of the judiciary."

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[47] On this inquiry, it was very apparent that the Commission's staff did not have a clear understanding of the functions of these judges. In fact, our inquiries disclosed that some in that staff actually believed City Court and Housing judges could be non-lawyers, and might be tasked with no more than presiding over small claims proceedings. This belief, of course, was far from accurate. Judges of these courts must be lawyers (*see* Uniform City Court Act §2104(b)(1); New York Cty Civil Court Act §110(i)); and they exercise some or all of the same jurisdiction as is execised by the New York City Civil and Criminal Courts and by the District Courts.

[48] This position was taken by OCA and the New York State Association of City Court Judges because of a collective belief that jurisdictional allocation, caseload and policy militated against singling out judges of these courts for appreciably smaller increases than their other colleagues on the trial bench. *See* Memorandum of the Office of Court Administration, *McKinney's 1994 Session Laws of New York*, p. 3300.

[49] *See* copy attached as Appendix N.

[50] The Commission was co-chaired by John R. Dunne (former State Senator and chair of the Senate Judiciary Committee) and Milton Mollen (former Presiding Justice of the Appellate Division, Second Judicial Department and former New York City Deputy Mayor for Public Safety). The other members included: Fritz Alexander (former Associate Judge of the Court of Appeals), Richard J. Bartlett (former Chief Administrative Judge), Harvey B. Besunder (former President of the Suffolk County Bar Association), Philip M. Damashek (former President of the New York State Trial Lawyers Association), John D. Feerick (President of the Citizens Union Foundation), Maryann Saccomondo Freedman (former President of the New York State Bar Association), Robert L. Haig (partner: Kelley, Drye), Robert R. Kiley (President of the New York City Partnership), Joseph J. Kunzeman (former Associate Justice of the Appellate Division, Second Judicial Department), Anthony R. Palermo(former President of the New York State Bar Association), Fern Schair (former Executive Director of the Association of the Bar of the City of New York) and Daniel B. Walsh (former Majority Leader, New York State Assembly).

The Chief Judge proceeded to direct the members of the Commission to examine the adequacy of pay then (*i.e.*, in 1977) received by judges, taking into account the economy and prevailing salary levels in the public and private sectors; to make recommendations concerning appropriate judicial salary levels; and to formulate a mechanism by which the State could make reasonable periodic adjustments in those salary levels.

In conducting its work, the Commission was aided by the William M. Mercer Company – internationally renown for its work in the field of executive compensation. The Commission found that, as of 1997:

> • Judicial salaries had seriously eroded in value over the past two decades, having lagged well behind growth in the Consumer Price Index.
>
> • The history of judicial salary adjustments in New York was marked by long periods of no salary adjustment, interspersed between periodic catch-ups that, in fact, failed to reflect economic inflation and only operated prospectively (meaning that there was no make-up for the loss of value experienced in the intervals between such adjustments as were enacted).
>
> • There was a marked imbalance between State and Federal judicial salaries.
>
> • Salary compression between judges and nonjudicial personnel – unfair to judges, unhealthy from an administrative standpoint and unwise as a matter of public policy – was a growing concern.
>
> • Comparisons between the compensation of judges and that of lawyers in the private sector showed troubling disparities, suggesting a growing inability to recruit and retain capable lawyers to serve as judges.

On the basis of these findings, the Commission, in its final report to the Chief Judge (*see* copy attached as Appendix O)[51], proposed a salary adjustment that would bring the salary of State Supreme Court justices approximately to the level of Federal District Court judges, *i.e.*, a 19.5% increase, bringing Supreme Court salaries up to $135,500 (or just over $1,000 less than then-effective Federal District Court salaries). For other trial and appellate judges and justices, it proposed the same 19.5% pay adjustment[52].

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[51] This report was never formally released, although it was shared with select legislators and legislative staff.

[52] The Commission determined to bifurcate its study and its recommendations. The first phase was to include review of economic, statistical and historical information for the purpose of formulating an appropriate judicial salary schedule. The second phase was to develop an appropriate mechanism for providing ongoing adjustment of judicial salaries so as to prevent recurrence of the many problems experienced as a result of the prevailing non-system for revising such salaries. No formal report was ever proposed memorializing the Commission's findings as to this second phase.

The 1998-99 Judicial Pay Raise

In December, 1998, pay raise legislation was enacted affecting the Judiciary, members of the Legislature and the statewide executive officials and section 169 officers. *See* L. 1998, c. 630[53]. Crucial to enactment of this legislation was an agreement between then-Governor George Pataki and legislative leaders pursuant to which the former agreed to approve a legislative (and judicial and executive) pay increase in return for passage of legislation including: (1) increase in the authorized number of charter schools in New York, and (2) deferred payment of legislative salaries during any period in which the State goes without an on-time budget.

The pay increase approved for the Judiciary as part of chapter 630, which took effect January 1, 1999, conferred pay parity upon State Supreme Court justices with Federal District Court judges; and conferred proportionate pay increases upon all other State-paid judges. These included a pay adjustment for the Housing judges of the New York City Civil Court. L. 1998, c. 630, §2 [amending section 110(f) of the New York City Civil Court Act]. For reasons that are unclear, however, the 1998 Legislature proceeded almost immediately to rescind this adjustment for the Housing judges before it could take effect. L. 1998, c. 632[54]. It would then be more than two years before that adjustment was fully restored[55].

The Chief Judge's 2005 Judicial Salaries Report

During the six years following the 1999 judicial pay raise, there was no further action either to increase judicial salaries yet again or to adopt a new methodology for periodic review and adjustment of those salaries. In 2005, prompted by concerns that the cost of living had risen by over 18% since 1999, that regular (every three years) collectively-bargained pay increases for nonjudicial personnel[56] were causing considerable salary compression within the courts (with many nonjudicial court employees attaining salary levels at or above those paid judges, including the judges who supervised their work) and that Federal District Court judges' salaries had been increased to $162,300[57], then-Chief Judge Judith Kaye published a special report on judicial salaries as part of her launch of a new campaign to achieve judicial pay reform. This report detailed the history of judicial salary adjustment in New York, set forth justifications for immediate judicial pay reform and provided a specific pay proposal calling for: (1) restoration of pay parity between State Supreme Court justices and Federal District Court judges; (2) proportionate adjustments in the salaries of other State trial and appellate judges; (3) mitigation of longstanding *intra* and *inter*-court pay disparities among the judges of New York's many trial courts; and (4) payment of automatic future cost of living adjustments to assure New York's trial

[53] *See* copy attached as Appendix P.
[54] *See* copy attached as Appendix Q.
[55] In 1999, the Legislature did approve a pay adjustment for Housing judges, albeit one that was less than that which originally would have been provided by chapter 630. L. 1999, c. 405, Part G, §1. *See* copy attached as Appendix R.
[56] During the six-year period between 1999 and 2005, those increases amounted to a minimum of 18.25%, which figure does not include the impact of tenure-based salary increases routinely received by many nonjudicial employees. *See* Judiciary Law §37(4).
[57] Approximately an 18.6% increase since 1999, when the State Legislature had given State Supreme Court justices pay parity with District Court judges.

judges of continuing pay parity with Federal District Court judges. *See* copy of the report attached as Appendix S.

Following publication of this report, the Judiciary mounted an unprecedented effort to secure legislative approval of the salary proposal it offered. Many judges traveled personally to Albany to lobby their legislative representatives, and aggressive steps were taken to secure strong editorial support in many of the State's newspapers. Also, the Judiciary began, routinely, to include in its annual budget submission requests for the funding of a judicial pay increase.

Notwithstanding these efforts, no pay reform legislation was enacted – in 2005 or in any of the four succeeding years – although the Legislature began, in the State's 2006-07 fiscal year, annually to include an appropriation for a judicial pay increase in the Judiciary Budget[58].

Judicial Pay Litigation

As 2006 came to an end – marking two years of unsuccessful campaigning for a pay raise, and nearly eight years with no judge receiving any pay adjustment – patience among some of the judges ran out. Hence, several of them proceeded to bring litigation against the State, challenging the legality of its persistent failure to provide a judicial pay increase[59]. Inside of two more years, other lawsuits were brought, including a lawsuit by the Chief Judge of the Court of Appeals herself[60]. As these lawsuits made their way through the courts, the Legislature and Governor continued to stumble in their efforts to resolve the judicial pay crisis.

In 2009, after they had proceeded through the lower courts, the various judicial pay lawsuits were consolidated for argument before the Court of Appeals. In February, 2010, the Court issued its ruling, holding, in effect, that the Legislature violated the separation of powers by not giving independent consideration to the merits of a judicial pay increase and that the Legislature now must remedy this violation. *Maron et al v. Silver et al, Larabee et al v. Governor et al, Chief Judge of the State of New York et al v. Governor et al*, 14 NY 3d 230 (2010) [(copy attached, Appendix T)]. Notwithstanding this ruling, the Legislature proceeded through its 2010 regular session without taking action on legislation affecting judicial salaries.

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[58] *See, e.g.*, L. 2006, c. 51, §2. The language used in this and succeeding appropriations was qualified, however, directing that access to the funding provided in the Budget was contingent, *i.e.*, its availability would be "pursuant to a chapter of the laws of [the relevant budgetary year] . . ." And, so, because the Legislature failed to enact the requisite chapter during the affected fiscal years, the judicial salary appropriation could never be used. *But see* the *Maron v. Silver* lawsuit described in footnote 59.

[59] *Maron v. Silver*, 4108-07. *Maron* alleged that the inclusion in the Judiciary's annual Budget of an appropriation to fund a judicial pay increase was itself all that was needed to authorize that pay increase. The case also raised constitutional challenges – including assertions that judicial salaries must regularly be revised to keep pace with changes in the cost of living; and that the failure to revise salaries amounted to equal protection and separation of powers violations.

[60] In September, 2007, more judges brought suit in *Larabee v. Spitzer*. This litigation raised some of the same legal assertions that were made in *Maron* along with a new one: *i.e.*, that the State's continuing practice of coupling judicial pay adjustment to the fate of legislative pay adjustment and other, unrelated public policy disputes offended the separation of powers. The following year saw commencement, by Chief Judge Kaye, of her own lawsuit on behalf of the institutional Judiciary, challenging, on constitutional grounds, the Governor's and Legislature's continued failure to provide judicial pay reform.

L. 2010, c. 567

As early as 1987, with enactment of a judicial, executive and legislative pay raise in that year, the Legislature had shown an interest in finding a process by which the State might regularly review and, where appropriate, adjust the compensation paid high-level State officials. *See* L. 1987, c. 263, §17. Over the ensuing years, there was much discussion of this matter; and, in the years following 2005 – when Chief Judge Kaye first promoted establishment of a regular COLA to keep State judicial salaries abreast of those of Federal judges[61] – several different approaches to regular and automatic judicial pay adjustment were proposed albeit without success[62]. That is, until late in 2010.

Perhaps motivated by the volume of these proposals or by the outrage that prompted them year after year, by a sense that the continuing judicial salary freeze was embarrassing the State nationally or somehow threatening our ability to recruit competent lawyers to serve as judges or by the 2010 judicial salary litigation and the Court of Appeals' decision in the various cases, the Legislature – at a special session called by then-Governor Paterson for November 30, 2010 – introduced and quickly passed a bill to establish a series of quadrennial commissions on compensation for the Judiciary. L. 2010, c. 567[63]. Under this legislation, a new commission would be established on April first of every fourth year, beginning April 1, 2011. This commission would consist of seven members (three appointed by the Governor, including the chair; one each by the Assembly Speaker and the Senate President *Pro Tem*; and two by the Chief Judge of the State) and have 150 days in which to:

- examine the prevailing adequacy of pay levels and non-salary benefits received by judges and determine whether any of such pay levels warrant adjustment; and

- determine whether, for any of the four years following the commission's establishment, the annual salaries paid judges warrant adjustment.

The commission would be required to report its findings, conclusions, determinations and recommendations to the Governor, the Legislature and the Chief Judge within a 150-day period allocated for its business (*i.e.*, by August 28th of the year in which the commission sits)[64]. Each commission recommendation concerning judicial pay adjustment would have the force of law and supersede inconsistent provisions of law unless modified or abrogated by statute prior to April first of the year to which such recommendation applies.

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[61] The Chief Judge's proposal called for a statutory indexing of the salaries of State Supreme Court justices to those of Federal District Court judges, *viz.*, those of the former would automatically be adjusted to match those of the latter every time the latter received a pay adjustment; and all other State-paid judges would see their salaries adjusted accordingly so that their pay relationships with Supreme Court justices would be preserved.

[62] Some of these proposals were memorialized as bills and introduced in the Legislature. Notably, in some, the effort to provide a means of conducting automatic review and adjustment of salaries was expanded to include members of the Legislature and the section 169 officers in addition to judges.

[63] *See* copy attached as Appendix U.

[64] Chapter 567 contains no express provision governing the procedures to be followed by a commission, nor does it provide for staffing or facilities. It does, however, authorize the commission to request and receive assistance from State agency personnel. Once a commission makes its report, the commission ceases to exist.

Notably, chapter 567 made no provision for consideration of the pay circumstances of legislators and statewide executive officials and section 169 officers.

2012-2014 Judicial Pay Increases

In the spring of 2011, the first of the so-called quadrennial judicial salary commissions was constituted[65] and began its deliberations. Following multiple public hearings and a review of many written submissions and comments, the commission released its recommendations in August of that year. Those recommendations called for the phase-in of judicial pay adjustments over three years beginning April 1, 2012[66]. With implementation of the last of the adjustments – on April 1, 2014 – the annual salary of a State Supreme Court justice would equal that of Federal District Court judges as of the time the recommendations were announced, *i.e.*, $174,000. This amounted to an aggregate 27.29% increase, which increase was also recommended for all other State-paid judges[67]. With announcement of these recommendations, the commission went out of existence.

As provided in the commission's enabling statute, the commission's recommendations were to have the force of law and automatically to take effect provided the Legislature did not act to abrogate or modify them before their respective effective dates. As the Legislature did not so act, the recommendations all took effect as proposed and scheduled.

L. 2015, c. 60

Chapter 567 of the Laws of 2010 called for establishment of *quadrennial* judicial salary commissions. Hence, as 2015 arrived, judges began to look forward to a second salary commission and further adjustment in their pay.

Before the 2015 commission could be constituted, however, the Legislature stepped in to modify the enabling statute in several significant ways. As part of chapter 60 of the Laws of 2015[68], the jurisdiction of the chapter 567 quadrennial judicial salary commissions was expanded to include not just review and adjustment of judicial pay but also review and adjustment of the

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[65] The commission was chaired by William C. Thompson (former President of the New York City Board of Education). The remaining six members included: Richard Cotton (Executive Vice President and General Counsel of NBC-Universal); William Mulrow (Senior Managing Director at Blackstone); James Tallon (former State legislator and President of the United Hospital Fund of New York); Robert B. Fiske, Jr. (former U. S. Attorney for the Southern District of New York); Kathryn S. Wylde (President of the Partnership for New York City); and Mark S. Mulholland (Managing partner: Ruskin Moscou Faltischek).

[66] *See* Appendix V for a copy of the commission's 2011 report, which includes a chart showing the recommended pay adjustments for all State-paid judges. Of note, the commission's recommendations were not unanimous. Two of the seven commission members would have recommended substantially higher pay adjustments than were called for by the commission majority. A third member, while in accord with the overall adjustments recommended, would have had those recommendations take effect in one immediate instalment, and not over three years.

[67] The 2011 commission did not take up the issue of *intra* and *inter*-court judicial pay disparities. Its recommendation that judges of all State-paid courts receive the same percentage pay adjustment continued, and actually modestly aggravated, existing pay disparities.

[68] L. 2015, c. 60, Part E (copy attached as Appendix W).

pay of members of the Legislature and the statewide executive officials and section 169 officers. Beyond this expansion, there were important changes made in the commission's membership and in the timetable for its operations. They include[69]:

• change in the appointing authority for the commission chair (under chapter 567, the chair was to be selected by the Governor; under chapter 60, the chair is now to be selected by the Chief Judge).

• change in the date for constituting the commission (under chapter 567, members were to be appointed by April first; under chapter 60, members are now to be appointed by June first).

• change in the due date for commission recommendations as to pay adjustments (under chapter 567, recommendations for adjustment of judicial salaries were due by August 28th; under chapter 60, recommendations are due by December 31st – for adjustment of judicial salaries – and by November 15th of the year following constitution of the commission – for adjustment of the salaries of legislators and statewide executive officials and section 169 officers).

[69] A more comprehensive summary of the changes made by chapter 60 is attached as Appendix X.

SUBMISSION TO THE

2015 Commission on Legislative, Judicial and Executive Compensation

APPENDIX K

2014 Partner Compensation Survey, Major, Lindsey & Africa

2014

MAJOR, LINDSEY & AFRICA

PARTNER COMPENSATION SURVEY

JEFFREY A. LOWE, ESQ.
Global Practice Leader - Law Firm Practice
Managing Partner - Washington, D.C.

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BACKGROUND

In the spring of 2014, Major, Lindsey & Africa® (MLA®) launched its third Partner Compensation Survey. The Survey, which was sent to nearly 44,000 law firm partners in Am Law 200-, NLJ 350- and Global 100-size firms across the United States, was a follow-up to MLA's ground-breaking **2010** and **2012** Surveys, which were the most comprehensive efforts ever undertaken to identify ranges of partner compensation, the criteria law firms use in determining partner compensation, and the satisfaction of law firm partners with their compensation and compensation systems.

This Report provides (i) an overview of the Survey, (ii) the demographic breakdown of the respondents to the Survey, (iii) selected highlights of compensation and other practice metrics as reported by the respondents, (iv) selected highlights of compensation satisfaction, factors and systems as reported by the respondents, and (v) an overview of various factors perceived by respondents to be important in the determination of their compensation.

THE SURVEY

The Survey consisted of 32 questions, with the results broken down into three major categories:

1. Demographic information about each respondent and the respondent's law firm, including:
    - Years as a partner
    - Partnership status (*i.e.*, Equity vs. Non-Equity)
    - Primary practice area
    - City
    - Lateral status (*i.e.*, "home grown" vs. lateral)
    - Compensation transparency of firm (*i.e.*, open vs. closed compensation system)
    - Lockstep nature of firm's compensation system (*i.e.*, lockstep vs. non-lockstep)
    - Size of law firm
    - Law firm Profits per (Equity) Partner, as reported in *The American Lawyer*
    - Gender
    - Ethnicity
2. Objective information about a respondent's compensation and practice metrics for 2013. Compensation and practice metrics include:
    - Total compensation
    - Total originations
    - Total working attorney receipts
    - Standard hourly billing rate
    - Total billable hours
    - Total non-billable hours
    - For lateral respondents, whether their compensation changed as a result of the lateral move and, if so, by what percent
3. Subjective information about a respondent's perception of his or her compensation and compensation system, including:
    - Factors perceived by respondent to be important to the firm in determining compensation
    - The factor which respondent believes should be most important in determining compensation

- Whether there has been a change in the importance of factors and, if so, which factors have become more important or less important
- Satisfaction with total compensation
- For those respondents who were not satisfied with their compensation, whether such dissatisfaction was attributable to any perceived bias
- Whether respondent believed his or her compensation should be higher and, if so, by what percent
- Whether respondent would like to see changes in his or her firm's compensation system and, if so, what changes were desired

METHODOLOGY

This Survey was sponsored and developed by Major, Lindsey & Africa (MLA). It was conducted in association with ALM Legal Intelligence (ALI), a research arm of ALM Media, the publisher of *The American Lawyer*. ALI allowed respondents to answer confidentially and anonymously, and MLA at no time was made aware of respondents' names or firms, either individually or in the aggregate.

Data for this Survey was collected using an online questionnaire hosted by ALI. Invitations were emailed to 43,816 partners across the United States at firms who have been Am Law 200-, NLJ 350- or Global 100-ranked in the past 5 years. The emailed invitation contained a link which partners could use to access the online survey. To maximize the response rate, four email reminders, each spaced about two weeks apart, were also sent.

The sample was provided by ALI, selected from its proprietary database of practicing lawyers in the U.S. and abroad. The questionnaire was jointly developed by MLA and ALI. As an incentive to complete the Survey, respondents were entered into drawings to win American Express gift certificates valued at $1,000 and $500.

Responses were received from partners practicing across the United States (2,087) and abroad (7) for a total of 2,094 responses. 1,018 emails were returned as undeliverable. Assuming that all of the remaining partners contacted received the invitation, the overall response rate was approximately 4.9%.

As is customary with surveys of this nature, not every respondent answered every question. Each data table notes the actual number of respondents for each category. In order for us to present the data meaningfully, in certain cases, individual respondents were grouped into larger categories.

In Questions 11 through 16 of the Survey, respondents were given ranges as response choices. For example, total compensation values were typically grouped in $50,000 ranges (*e.g.*, $800,000 to $850,000). In order to calculate the data for this Report, ALI used, wherever possible, the midpoint for all responses that were expressed as ranges. In those cases where midpoints where not identifiable (*e.g.*, responses where one parameter of the range was open-ended), ALI and MLA jointly agreed on values to be used for those responses.

For profits per equity partner (PPP) data, ALI used the most recent data available. For Am Law firms, ALI used PPP data from the Am Law 200 ranking. For international firms, ALI used the PPP data from the Global 100 ranking.

In order to protect respondents' identities, this Report does not disclose any information about any individual or any individual law firm. All information is reported in the aggregate to ensure anonymity. ALI did not provide the names, email addresses or any other identifying information of individual respondents or any law firm to MLA. At all times, MLA remained blind to the source of the data.

In most cases, this Report compares the results of the 2014 Survey with those of the 2012 Survey. The complete results of the 2012 Survey can be found on the **MLA website**.

Statistical Terms Used

The statistical terms used in the Report are defined below.

- The median (or the 50th percentile) is the middle or central number in a series of numbers arranged in order of value. There are equal numbers of smaller and larger observations.
- The average (or mean) is the total value of all observations divided by the number of observations. While an average can be distorted by "outliers"—data that is aberrant—great care was taken to identify and remove outliers from this Report. Finally, percentages may not total 100 percent because of rounding.

KEY FINDINGS

The overarching story in the 2014 Partner Compensation Survey continues to follow our previous findings, namely: the longer the tenure, the larger the firm, and the bigger the legal market, the higher compensation likely will be. Key findings also include:

- Average compensation for all respondents was $716,000, up 5% from 2012 ($681,000). The average billing rate for all respondents was $608, up $24 (+4%) from 2012 ($584). However, median compensation for all respondents was only $475,000, which means that respondents at the higher end of compensation greatly skew the average compensation data.
- The compensation gap between Equity partners and Non-Equity partners continues to grow: Equity partners averaged $971,000 in compensation in 2014, vs. $338,000 for Non-Equity partners. While compensation for Non-Equity partners has remained essentially flat since 2010 ($336,000 in 2010, vs. $335,000 in 2012, vs. $338,000 in 2014), compensation for Equity partners has jumped nearly 20% during that same period (from $811,000 in 2010, to $896,000 in 2012, to $971,000 in 2014). While not as drastic a difference, median compensation for Equity partners was $675,000, as compared to $325,000 for Non-Equity partners. Equity partners also remain three times more likely to classify themselves as Very Satisfied with their compensation than Non-Equity partners (37% and 12%, respectively, in 2014 vs. 36% and 12%, respectively, in 2012), and much less likely to classify themselves as Not Very Satisfied (3% and 8% in 2014, vs. 4% and 11%, respectively, in 2012).
- Average originations for all respondents were $1,957,000, up 3% from 2012 ($1,893,000), mirroring the 3% increase from 2010 to 2012. As with compensation, median originations were significantly lower than the average: median originations for all respondents were $1,050,000, with respondents at the higher end greatly skewing the average originations data. Equity partners reported average

originations of $2.81 million (+7%), versus a 6% decline for Non-Equity partners. For the first time since we started measuring this data, Equity partners now originate more than four times the amount of business than Non-Equity partners. Moreover, whereas average originations for Equity partners has grown 13% since 2010 ($2.81 million vs. $2.49 million), average originations for Non-Equity partners has declined from $700,000 to $670,000 during that same period. Median originations for Equity partners and Non-Equity partners generally track the average: median originations for Equity partners were $1,650,000, which is slightly less than four times the $450,000 originated by Non-Equity partners.

- Similarly, unlike 2012, where all but the most senior grouping showed modest increases in originations and the most senior grouping showed an 11% decline, in 2014 partners in the 1 to 5 year category showed a 17% decline in originations ($810,000 vs. $980,000), whereas those in the 21+ year category posted a 10% gain ($2,92,000 vs. $2,660,000).
- Among the seven practice areas grouped for purposes of this Report, Labor & Employment partners continue to report the lowest average compensation ($503,000), compared to a high of $893,000 for Corporate partners.
- As in our prior Surveys, partners in Open compensation systems reported *significantly* higher average compensation ($843,000; +4%) compared to partners in Partially Open ($574,000; +11%) and Closed ($484,000; +4%) systems. While both the Open and Closed system partners reported identical percentage gains in 2014, the compensation gap between the two groupings remains a surprising 74%. Median data is much more closely grouped: median compensation for Open system partners was $575,000, as compared to $425,000 for partners in Partially Open systems and $325,000 for partners in Closed systems. Similarly, partners in Open compensation systems remained much more likely to classify themselves as Very Satisfied (32%) than partners in Partially Open (20%) or Closed (18%) compensation systems, though the gap has narrowed somewhat since 2012.
- The disparity in compensation and compensation satisfaction across cities continues to be quite pronounced. Average compensation ranged from a low of $438,000 in Seattle to a high of $1,167,000 in Silicon Valley. Unlike 2012, when compensation rose in virtually every city compared to 2010, the 2014 results showed wide swings in partner compensation among cities, with Philadelphia (+46%), Los Angeles (+24%) and Chicago (+20%) showing the largest gains, and Dallas (-19%) and Seattle (-18%) showing the most significant declines.
- Male partners continue to significantly outpace females in compensation: $779,000 (+6%) for males vs. $531,000 (+7%) for females in 2014, compared to $734,000 vs. $497,000 in 2012. Median compensation for males was $525,000 vs. $375,000 for females. Male partners reported average originations of $2.19 million in 2014, representing a gain of 8% over 2012. Conversely, reported originations for females declined 12%, from $1.41 million in 2012 to $1.24 million in 2014. This nearly 77% spread in originations between males and females is significantly higher than the 50% spread reported in 2010 and the 44% spread reported in 2012. Median originations for males were $1,150,000 vs. $650,000 for females.
- Cronyism continues to be the most significant reason for dissatisfaction with compensation satisfaction, outpacing all of the other enumerated reasons combined. However, while perceived cronyism apparently remains high, it is worth noting that the percentage has fallen from 40% when we first measured it in 2010 to 30% in 2014.

- Originations continue to drive compensation decisions: 74% of all respondents noted that Originations were a Very Important factor in determining compensation, 66% of all respondents perceived it to be *the most important factor* (working attorney receipts was next closest at 21%) and 55% of all respondents cited originations as becoming more important in the compensation process. These numbers are all virtually identical to the 2012 results.

COMPENSATION, ORIGINATIONS, RECEIPTS, BILLING RATES AND HOURS

Questions 11 through 16 of the Survey dealt with the principal practice metrics of the respondents for the 2013 fiscal year, and address: total compensation, total originations, total working attorney receipts, standard hourly billing rate, total billable hours, and total non-billable hours. These key practice metrics were then sorted by the following categories:

1. Partnership Tenure
2. Partnership Status
3. Practice Area
4. City
5. Compensation Transparency
6. Lockstep Type
7. Firm Size
8. Firm PPP
9. Gender
10. Ethnicity

Compensation

A total of 2,068 respondents provided their compensation data, with reported compensation ranging from less than $100,000 (1 respondent) to over $8 million (4 respondents). Average compensation for all respondents was $716,000, up 5% from 2012 ($681,000). However, median compensation data paints a very different picture: median compensation for all respondents was only $475,000, which means that respondents at the higher end of compensation greatly skew the average compensation data.

Partnership Tenure and Partnership Status

As in previous years, when sorted by Partnership Tenure, average compensation climbs steadily by tenure grouping, ranging from $378,000 for those in the 1 to 5 year category up to $1,015,000 for those in the 20+ year category. However, while the two junior groupings (1 to 5 years and 6 to 10 years) both showed slight declines in average compensation this year, down 5% and 1%, respectively, the two more senior groupings (11 to 20 years and 20+ years) both showed strong gains, climbing 12% and 10%, respectively. Presumably, these strong gains by the more senior partners reflect the strong gains in partner compensation by Equity partners generally (discussed below), who presumably are more senior than Non-Equity partners.

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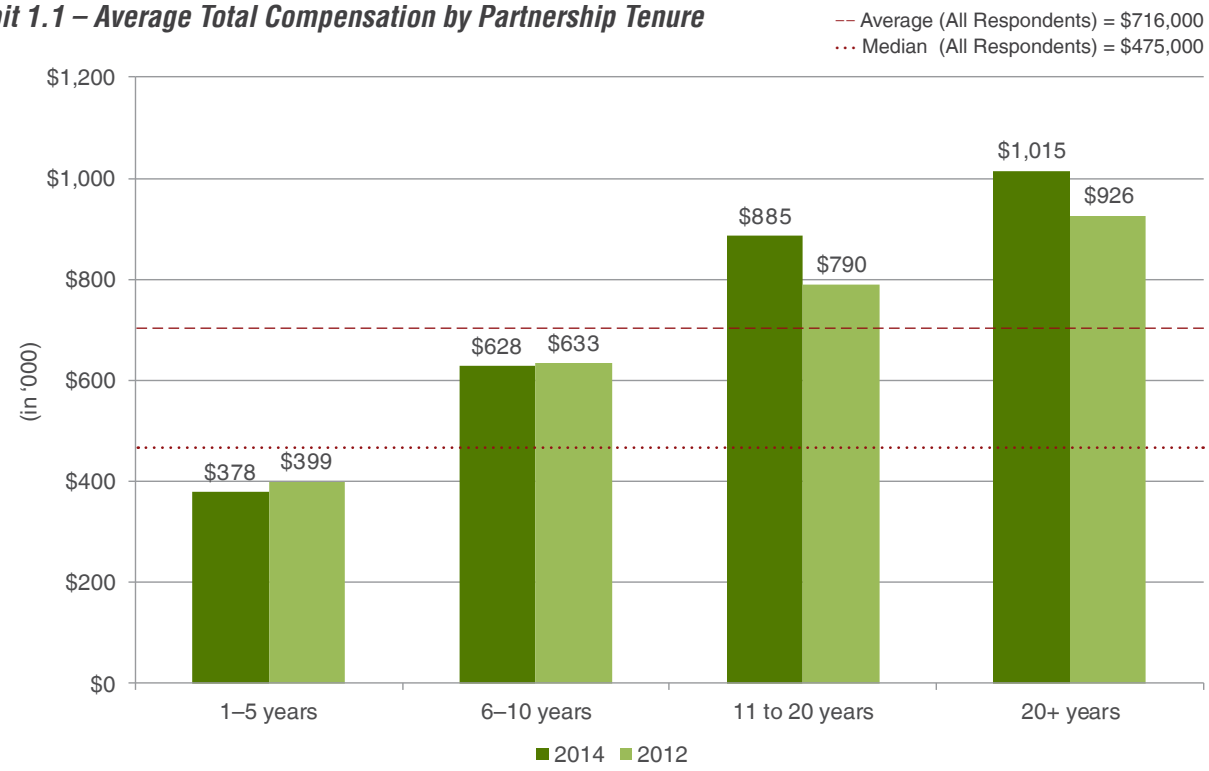
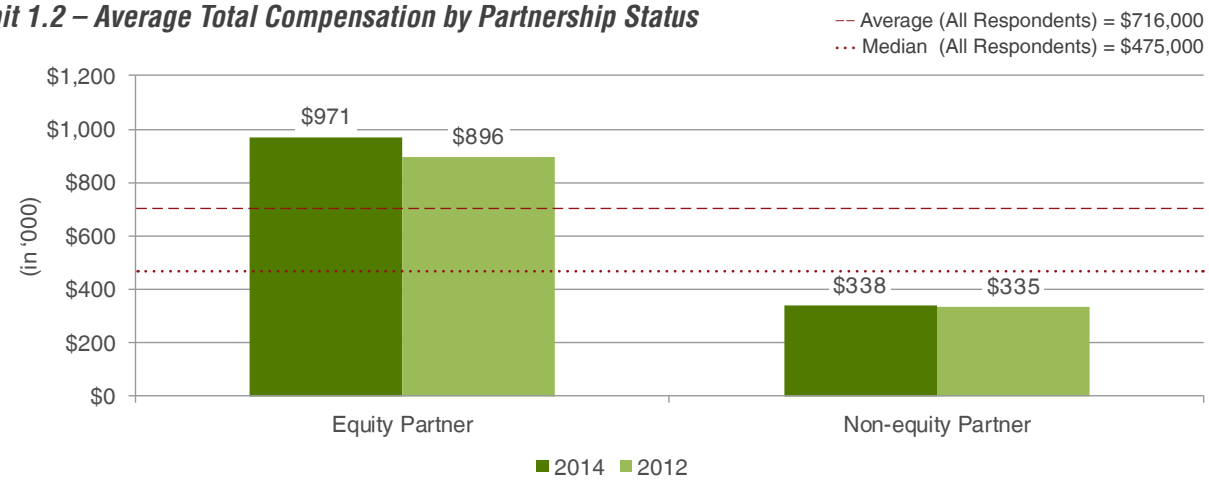
Exhibit 1.1 – Average Total Compensation by Partnership Tenure



While we expected that Equity partners would continue to significantly outpace Non-Equity partners in compensation, the level of disparity has grown markedly since our first Survey in 2010. Compensation for Non-Equity partners has remained essentially flat since 2010, ($336,000 in 2010 vs. $338,000 in 2014), whereas compensation for Equity partners has jumped nearly 20% during that same period (from $811,000 in 2010, to $896,000 in 2012, to $971,000 in 2014), with Equity partners now averaging about 2.9 times the total compensation of their Non-Equity colleagues. While not as drastic a difference, median compensation for Equity partners was $675,000, as compared to $325,000 for Non-Equity partners.

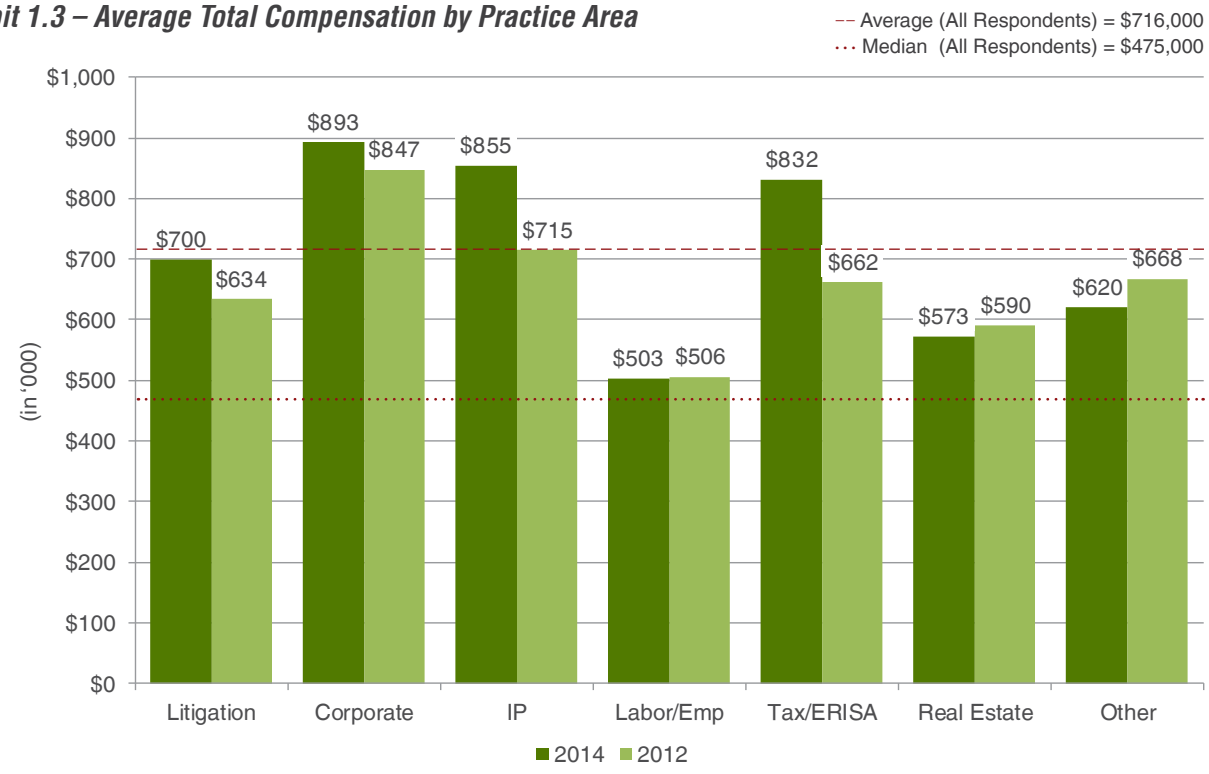
Exhibit 1.2 – Average Total Compensation by Partnership Status



Practice Area

Among the seven practice areas grouped for purposes of this Report, Labor & Employment partners continue to report the lowest average compensation ($503,000), compared to a high of $893,000 for Corporate partners. Tax and ERISA (+26%), IP (+20%), and Litigation (+10%) partners showed the largest percentage increases from 2012, while Real Estate (-3%) and Labor & Employment (-1%) partners were the only practice areas to show a decline in average compensation.

Exhibit 1.3 – Average Total Compensation by Practice Area



City

The disparity in compensation continues to be quite pronounced when sorted by city. Average compensation ranged from a low of $438,000 in Seattle to a high of $1,167,000 in the Silicon Valley area of California, a difference of more than 150%. Unlike 2012, when compensation rose in virtually every city compared to 2010, the 2014 results showed wide swings in partner compensation among cities, with Philadelphia (+46%), Los Angeles (+24%) and Chicago (+20%) showing the largest gains, and Dallas (-19%) and Seattle (-18%) showing the most significant declines. Average compensation for the 13 cities[1] highlighted in this Report is as follows:

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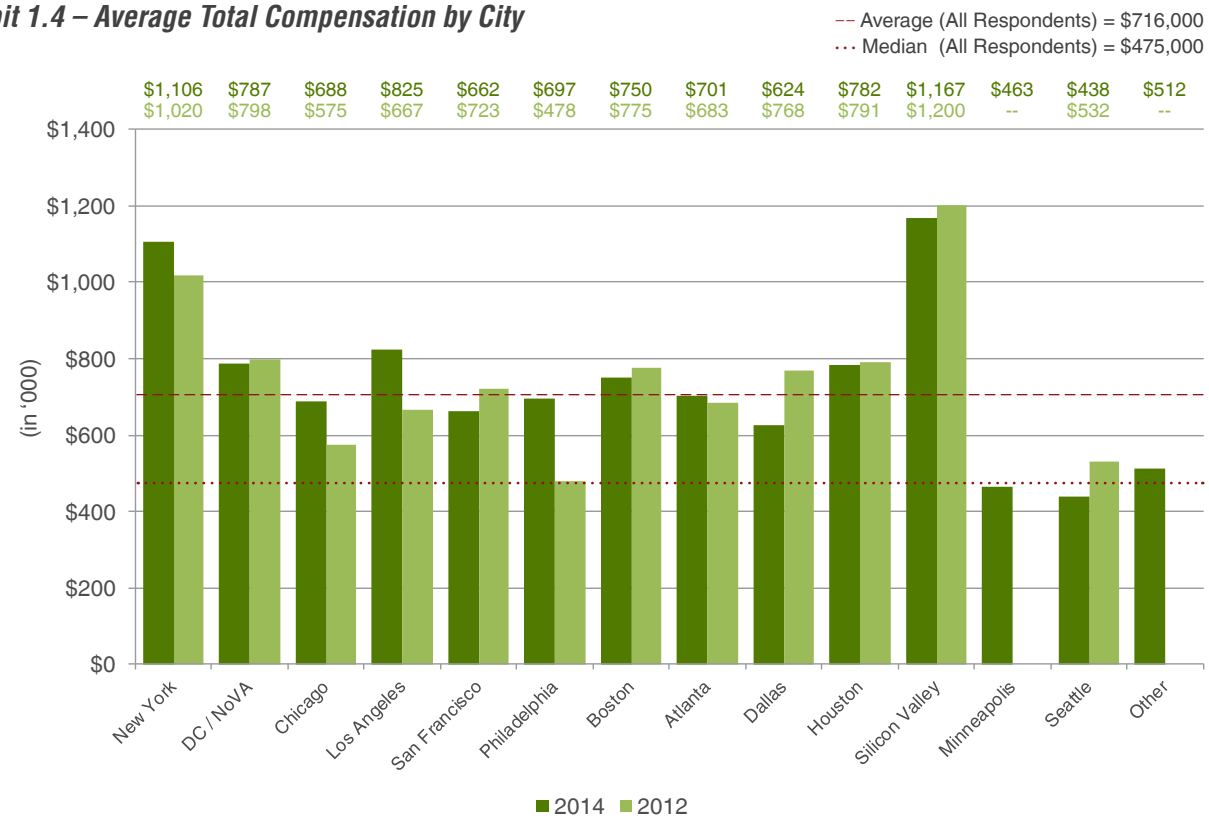
[1]These 13 cities were chosen for their total response counts. Each of the 13 had 50 or more responses, with the exception of Seattle (38), which was included for purposes of trending with the 2012 Report, and Minneapolis (45), which was not broken out separately in the 2010 or 2012 Reports.

Exhibit 1.4 – Average Total Compensation by City



Compensation Transparency and Lockstep Type

As in our prior Surveys, partners in Open compensation systems reported *significantly* higher average compensation ($843,000; +4%) compared to partners in Partially Open ($574,000; +11%) and Closed ($484,000; +4%) systems. While both the Open and Closed system partners reported identical percentage gains in 2014, the compensation gap between the two groupings remains a surprising 74%. Median data is much more closely grouped: median compensation for Open system partners was $575,000, as compared to $425,000 for partners in Partially Open systems and $325,000 for partners in Closed systems.

When sorted by Lockstep Type, Pure Lockstep partners reported average compensation of $821,000 (-33%)[2] compared to average compensation of $730,000 (+5%) for Non-Lockstep partners. Partners who classified their compensation system as Generally Lockstep continue to report significantly lower compensation than both categories, with an average compensation of $629,000 (+12%).

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[2] Because the population size for the "Pure Lockstep" category (14 responses) is much lower than for the other categories, which had 1,794 (Non-Lockstep) and 280 (Generally Lockstep) responses, respectively, it is difficult to draw meaningful conclusions for this category due to potential greater variance in the reported data.

Exhibit 1.5 – Average Total Compensation by Compensation Transparency

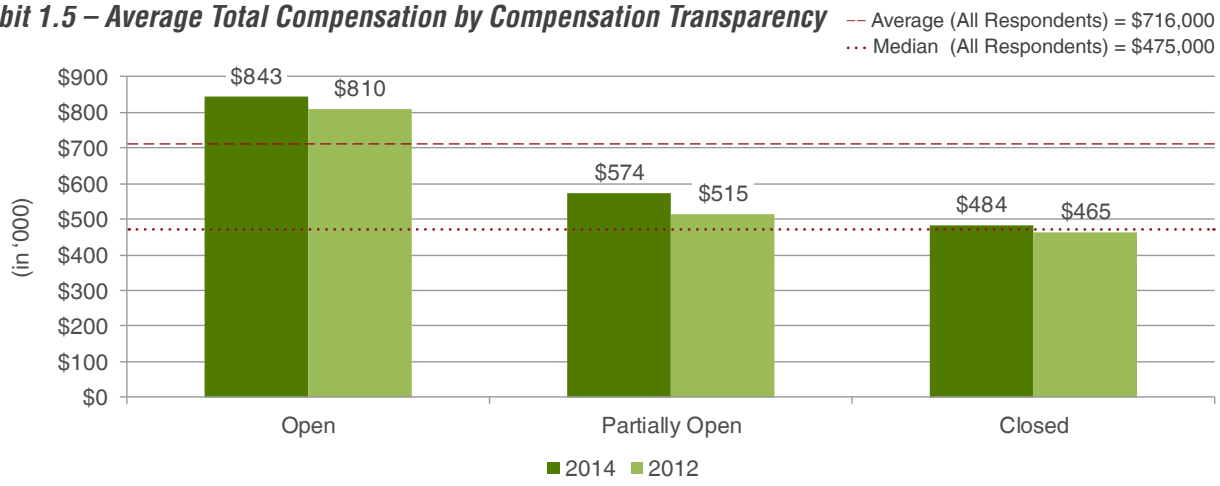
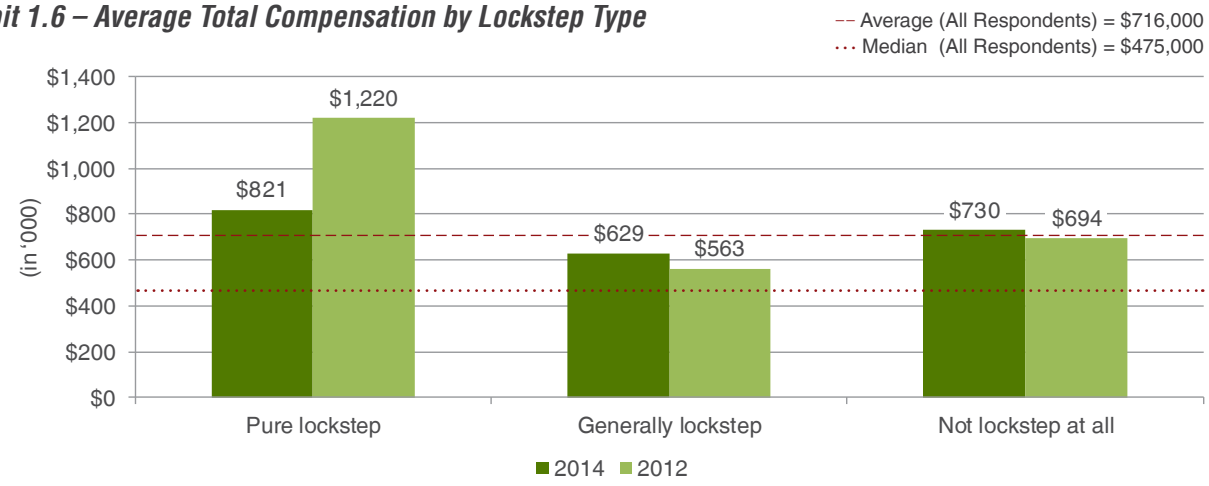


Exhibit 1.6 – Average Total Compensation by Lockstep Type



Firm Size and Firm PPP

Although average compensation for all partners as a group rose 5.1% ($716,000 vs. $681,000), the growth was very uneven, with average compensation at firms of 51-200 lawyers and firms of 201-500 lawyers rising only 1% and 3%, respectively, while average compensation at firms of 501-1,000 lawyers and firms of 1,000+ lawyers rising 7% and 16%, respectively.

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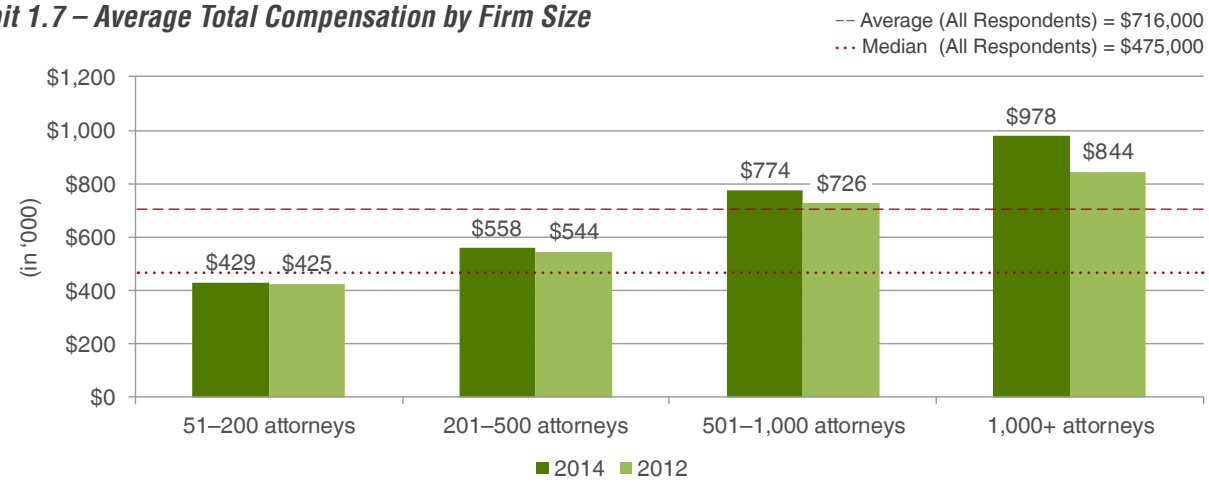
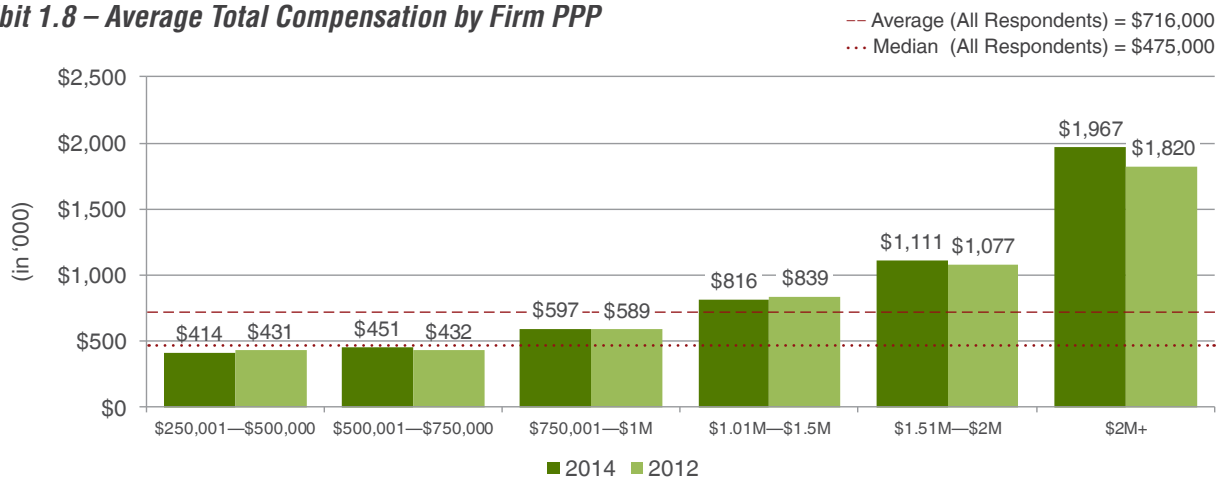
Exhibit 1.7 – Average Total Compensation by Firm Size



Unlike 2012, when virtually every PPP category other than the two highest showed a decline in average compensation, the 2014 results were more uneven, with no apparent trend. The $250,001-$500,000 category showed the largest decline ($414,000; -4%), while the $2 million+ category reported the largest gain ($1,967,000: +8%).

Exhibit 1.8 – Average Total Compensation by Firm PPP



Gender and Ethnicity

As in our prior Surveys, when sorted by gender, male partners' average compensation continues to significantly outpace female partners. Average compensation for male partners was approximately 47% higher than for female partners, $779,000 (+6%) vs. $531,000 (+7%). This 47% difference in compensation is consistent with the 48% differential reported in our 2012 Survey. Median compensation for males was $525,000 vs. $375,000 for females.

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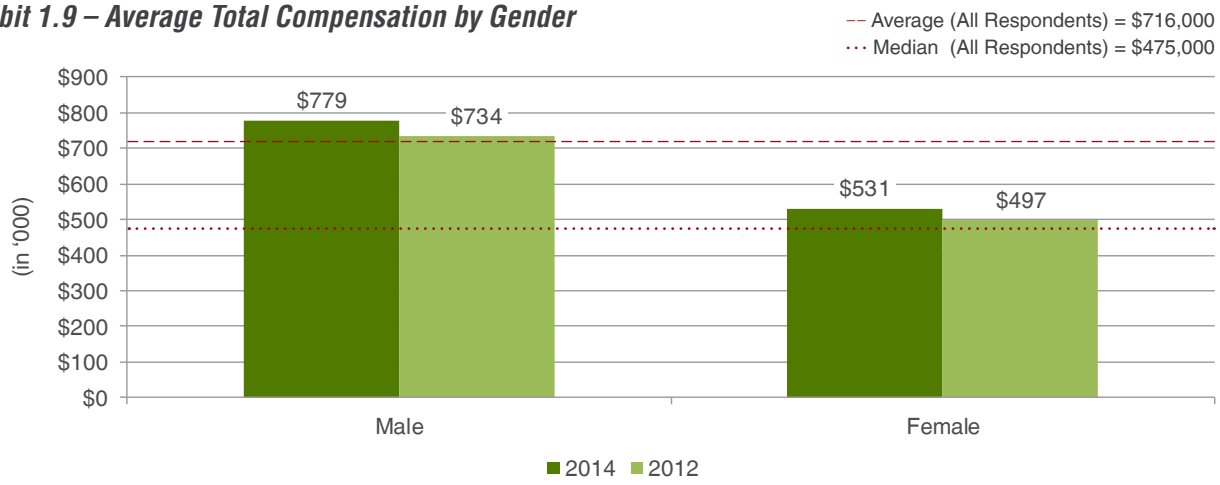
The average compensation of White partners was $734,000, up 7% from 2012. Black partners reported significantly higher average compensation ($574,000; +17%), whereas Hispanic and Asian Pacific partners reported declines of 27% ($479,000) and 9% ($645,000), respectively. Partners who categorized themselves as Mixed Races showed an increase of 10%, rising from $670,000 to $736,000.[3]

Exhibit 1.9 – Average Total Compensation by Gender



Changes in Compensation for Lateral Partners

Questions 7 through 9 of the Survey were directed at lateral partners, and asked whether their compensation changed as a result of the lateral move and, if so, by what percent. A total of 956 respondents reported that they joined their current firm laterally as a partner. Approximately 53% of respondents reported that their compensation increased 10% or more as a result of the lateral move, compared to 62% in 2012. Approximately 8% saw it decrease by 10% or more (compared to 9% in 2012), and approximately 39% said their compensation stayed basically the same (compared to 29% in 2012).

For the complete results, please refer to ***Appendix II – Average Total Compensation****, and* ***Appendix III – Compensation Change for Lateral Partners****.*

Originations

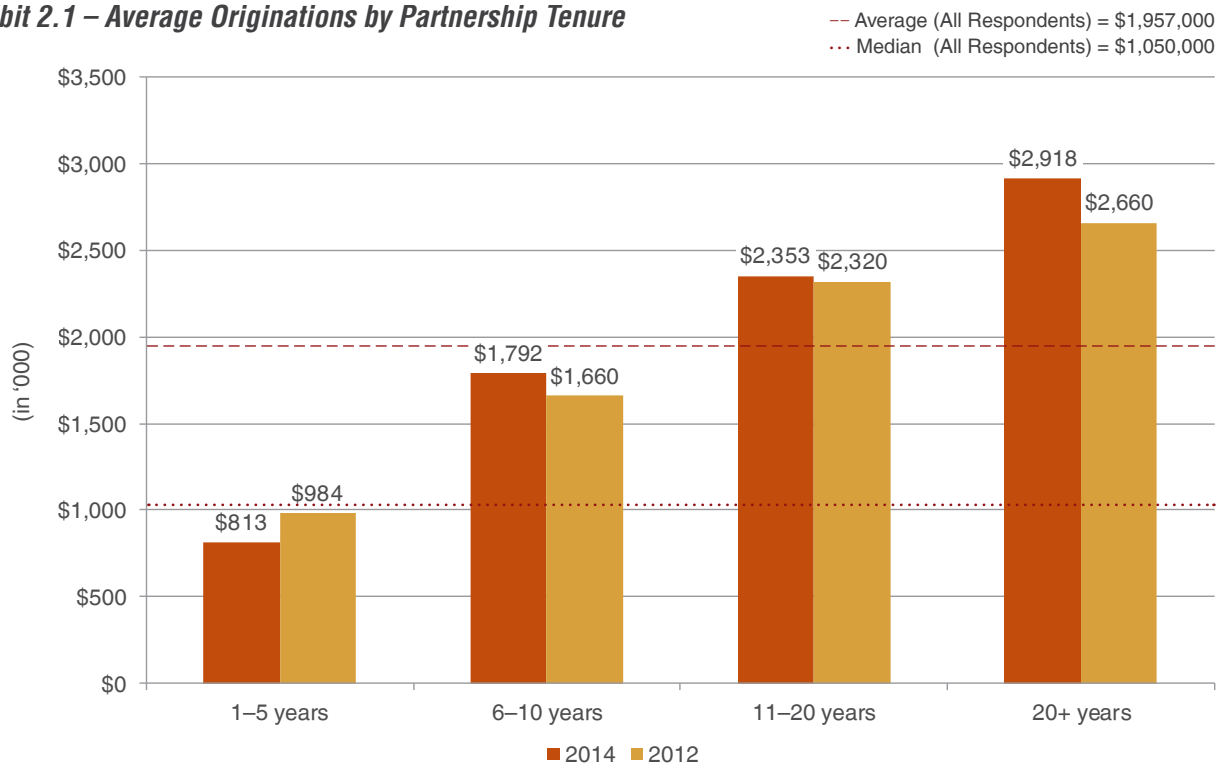
A total of 1,879 respondents provided their originations data, with reported originations ranging from less than $100,000 (220 respondents) to over $30 million (6 respondents). Average originations for all respondents were $1,957,000, up 3% from 2012 ($1,893,000), mirroring the 3% increase from 2010 to 2012. As with compensation, median originations were significantly lower than the average: median originations for all respondents were $1,050,000, with respondents at the higher end greatly skewing the average originations data.

[3]The ethnic categories used in the Survey and this Report track those previously used by the American Bar Association. The number of respondents by ethnic category was as follows: White, not Hispanic (1,854), Black, not Hispanic (49), Hispanic (41), Asian Pacific, not Hispanic (74), American Indian, not Hispanic (4), Native Hawaiian or Pacific Islander, not Hispanic (1), Mixed Races (24). Because of the relatively small number of non-White respondents, it is difficult to draw statistically meaningful conclusions for those categories.

Partnership Tenure and Partnership Status

Unlike 2012, where all but the most senior grouping showed modest increases in originations and the most senior grouping showed an 11% decline, in 2014 partners in the 1 to 5 year category showed a 17% decline in originations ($810,000 vs. 980,000), whereas those in the 21+ year category posted a 10% gain ($2,92,000 vs. $2,660,000). Partners in the 6 to 10 year category and the 11 to 20 year category reported increases of 8% and 1%, respectively.

Exhibit 2.1 – Average Originations by Partnership Tenure



Equity partners reported average originations of $2.81 million (+7%), whereas Non-Equity partners posted a 6% decline ($670,000). For the first time since we started measuring this data, Equity partners now originate more than four times the amount of business than Non-Equity partners. Moreover, whereas average originations for Equity partners has grown 13% since 2010 ($2.81 million vs. $2.49 million), average originations for Non-Equity partners has declined from $700,000 to $670,000 during that same period. Median originations for Equity partners and Non-Equity partners generally track the average: median originations for Equity partners were $1,650,000, which is slightly less than four times the $450,000 originated by Non-Equity partners.

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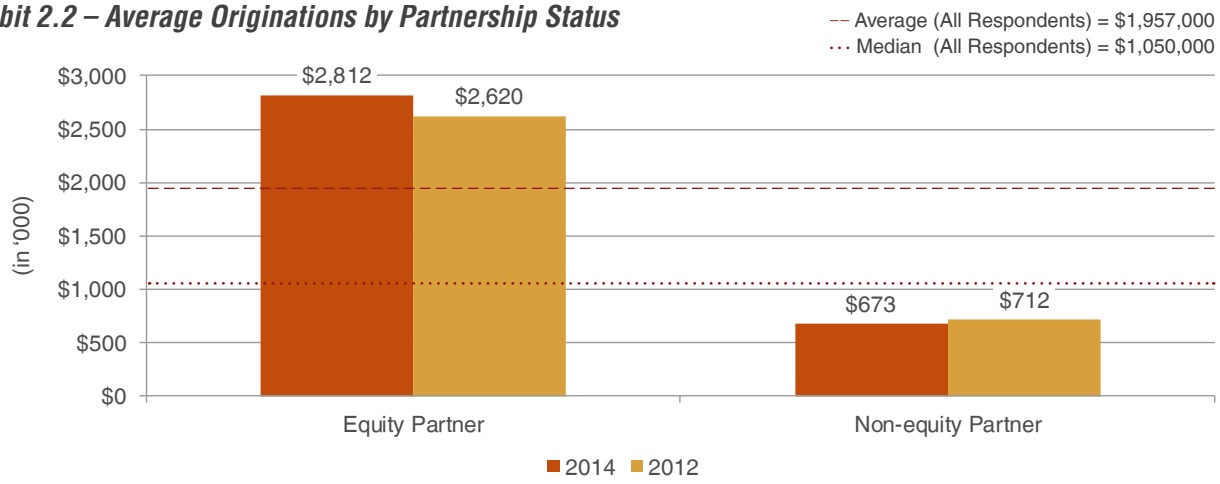
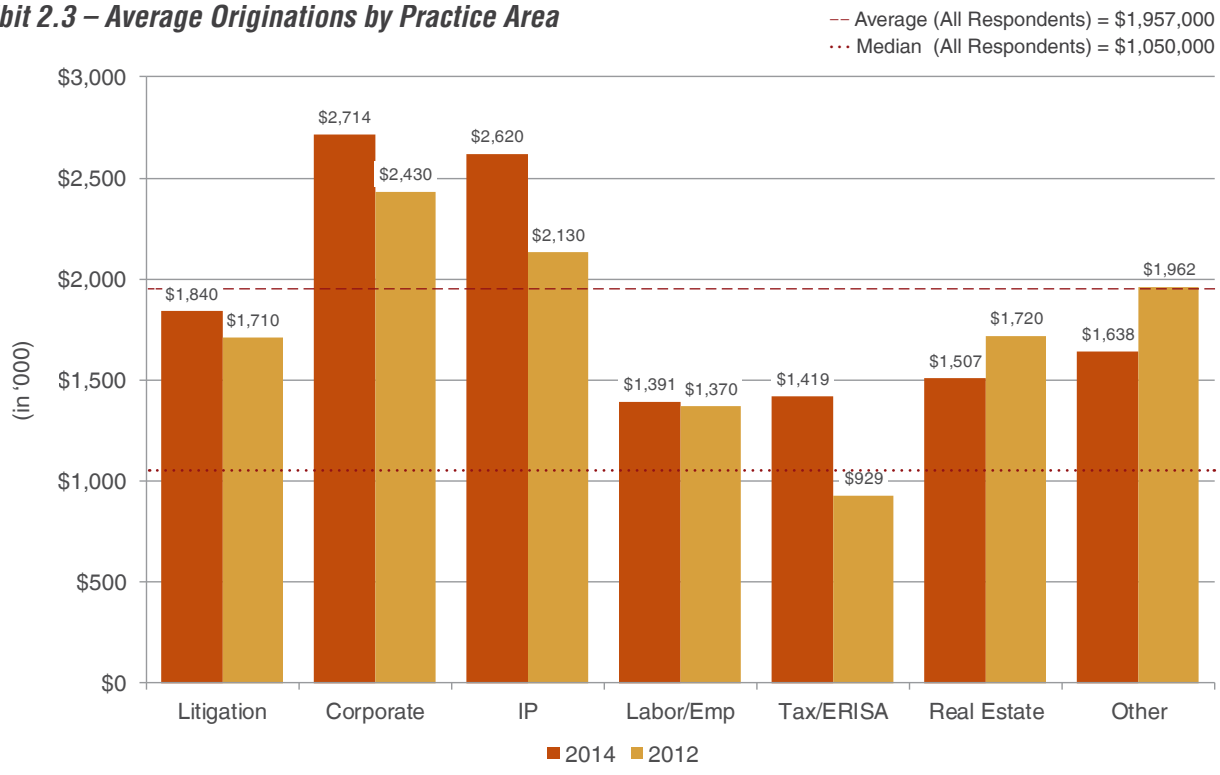
Exhibit 2.2 – Average Originations by Partnership Status



Practice Area

Average originations by Practice Area generally tracked with compensation trends. At the high end, Corporate partners reported average originations of $2.71 million (+12%), and on the low end, Labor & Employment partners reported $1.39 million in originations (+1%). Tax & ERISA ($1.42 million; +53%) and IP ($2.62 million; +23%) partners reported the most significant gains from 2012, while Real Estate partners showed the largest decline ($1.51 million; -12%).

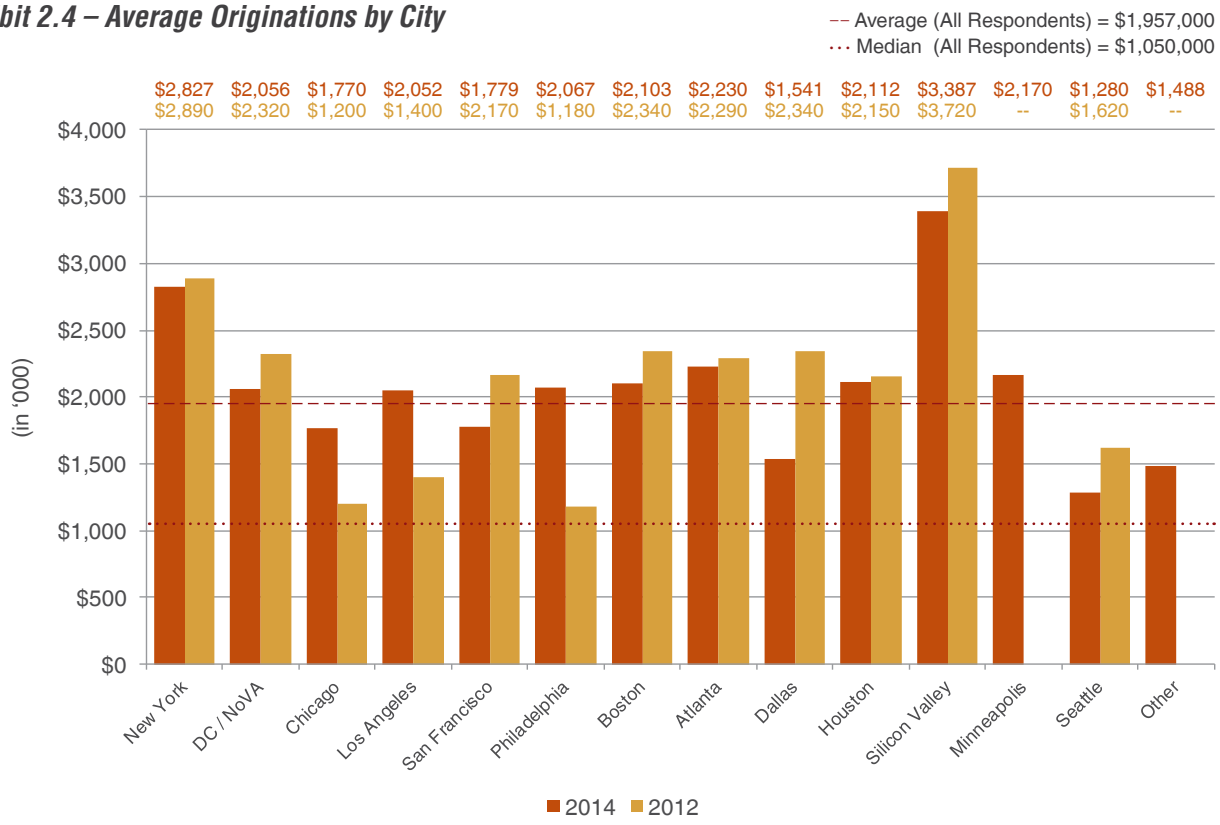
Exhibit 2.3 – Average Originations by Practice Area



City

Origination trends by City also tended to follow compensation trends. Average originations ranged from a low of $1.28 million in Seattle (-21%) to a high of $3.39 million in Silicon Valley (-9%). As we saw with total compensation, cities with the highest jumps in total originations were Philadelphia (+75%), Chicago (+48%) and Los Angeles (+46%). Dallas showed the largest decrease in originations, falling 34%, from $2.34 million in 2012 to $1.54 million in 2014.

Exhibit 2.4 – Average Originations by City



Compensation Transparency and Lockstep Type

While partners in Open compensation systems ($2.34 million; -1%) continued to report average originations significantly higher than their Partially Open ($1.33 million; -1%) and Closed compensation system ($1.35 million; +27%) counterparts, Closed compensation system partners reported strong gains in 2014. We believe the wide disparity in originations among these groups accounts for much of the disparity in compensation for the groups, although it is interesting to note that while the Partially Open and Closed compensation groups reported nearly identical originations in 2014, partners in Partially Open systems earned nearly 19% more than those in Closed systems ($574,000 vs. $484,000). Median originations for Open system partners were $1,250,000, as compared to $750,000 for partners in Partially Open systems and $650,000 for partners in Closed systems.

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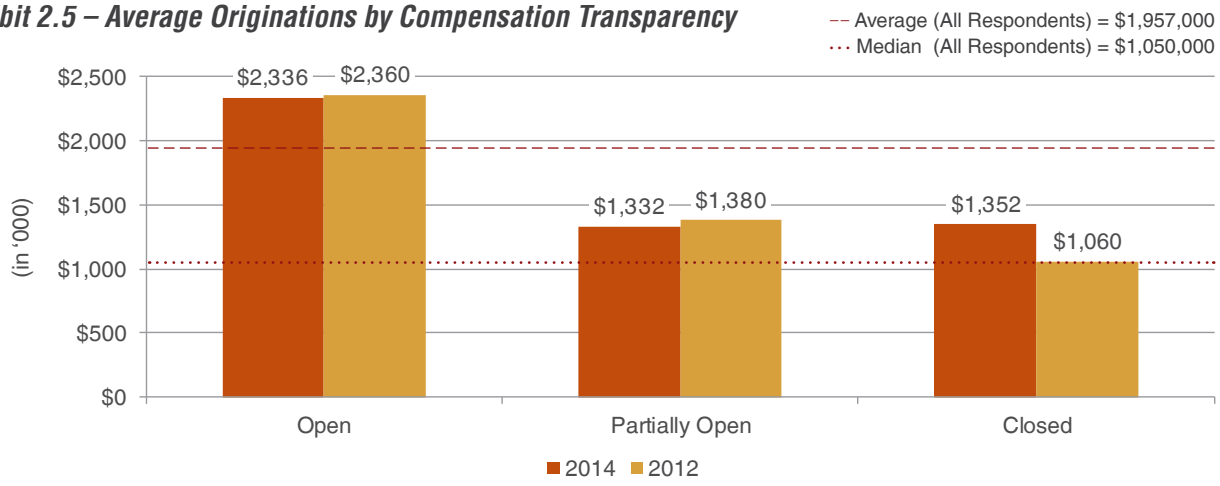
Exhibit 2.5 – Average Originations by Compensation Transparency

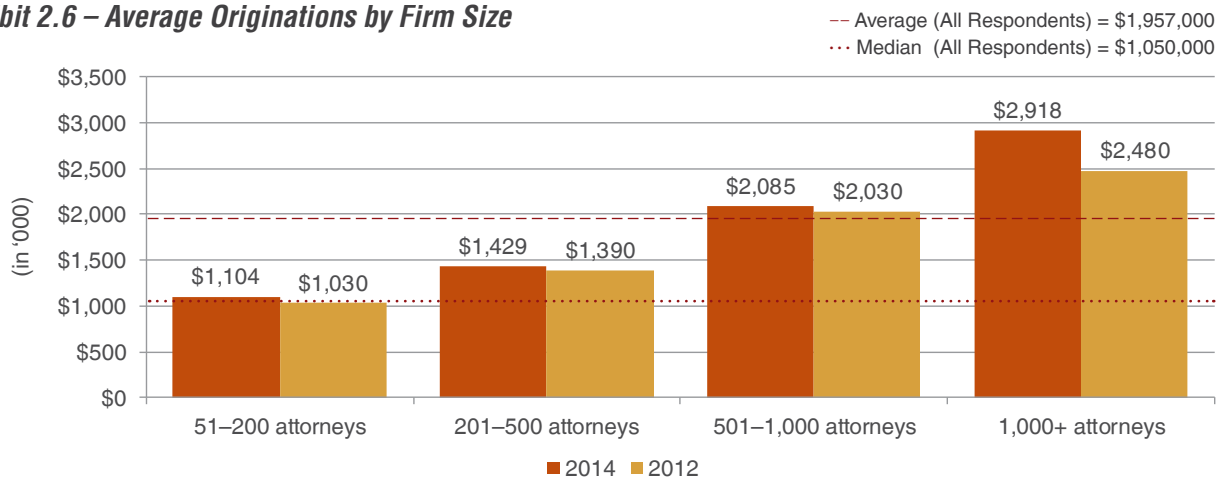


When sorted by Lockstep Type, Pure Lockstep partners showed a significant decline in originations ($1.1 million; -67%), whereas Generally Lockstep partners reported an increase of 15% ($1.80 million) and Non-Lockstep partners reported an increase of 3% ($1.99 million). As noted above, given the relatively small number of Pure Lockstep respondents (14), it is difficult to draw any meaningful conclusions for this category.

Firm Size and Firm PPP

When sorted by Firm Size, much like we see for compensation, the larger the firm, the higher the average originations. Originations at firms with 1,000+ lawyers showed the strongest gains ($2.92 million), representing an 18% increase from 2012 ($2.48 million), likely accounting for the similarly strong gain in compensation (+16%) for this group. When sorted by PPP, the results were more uneven, with no apparent trend. The $500,001-$750,000 and $2 million+ categories both posted 10% gains, whereas the $1,500,001-$2 million category showed the largest decline (-6%).

Exhibit 2.6 – Average Originations by Firm Size



Gender and Ethnicity

Male partners reported averaged originations of $2.19 million, representing a gain of 8% over 2012. Conversely, reported originations for females declined 12%, from $1.41 million in 2012 to $1.24 million in 2014. This nearly 77% spread in originations between males and females is significantly higher than the 50% spread reported in 2010 and the 44% spread reported in 2012. Median originations for males were $1,150,000 vs. $650,000 for females.

White partners averaged $2 million in originations (+6%). Hispanic partners reported a 26% increase in originations ($1.83 million), whereas Asian-Pacific partners ($1.85 million; -17%) and Black partners ($1.35 million; -9%) both reported declines. Originations for those who classified themselves as Mixed Races were essentially flat ($2.27 million; +1%).

For the complete results, please refer to ***Appendix IV – Average Total Originations****.*

In her corollary article to this Report, ***Show Me the Money***, Natasha Innocenti, Leader of MLA's Northern California Partner Practice Group, examines the disturbing finding that women are still being paid less than men, even when adjusted for comparable levels of originations.

Working Attorney Receipts

A total of 1,981 respondents provided their working attorney receipts (WAR) data, with reported WAR ranging from less than $100,000 (15 respondents) to over $5 million (33 respondents)[4]. Average WAR for all respondents was $1,097,000, up 3% from 2012 ($1,070,000). Median WAR for all respondents was $850,000.

Average WAR trends by tenure and status were relatively flat. When sorted by practice are, each group showed gains of at least 6% other than Real Estate partners, the only practice area to report a decline (-14%). Tax & ERISA partners showed the largest gains, at +16%. Notably, although Equity and Non-Equity partners both reported a 2% increase in WAR in 2014, and the spread in WAR between the two groups has actually narrowed from 70% ($1.31 million vs. $770,000) in 2010 to 48% ($1.26 million vs. $850,000) in 2014, compensation for Non-Equity partners has remained essentially flat whereas compensation for Equity partners continues to rise, lending further support (as if any were still needed) to the fact that in modern law firm life, one's compensation is much more a function of one's originations than one's billable hours.

Although partners in Open compensation systems continue to report dramatically higher average compensation as compared to partners in Partially Open and Closed systems, the differences among the three groups' WAR remains much smaller, at $1.18 million, $1.03 million and $940,000, respectively. Similarly, although there continues to be a large disparity in compensation and originations based on gender, average WAR for male and female partners remain much closer, at $1.14 million and $950,000 respectively. Median WAR data for these groups generally tracked the averages.

For the complete results, please refer to ***Appendix V – Average Total Working Attorney Receipts****.*

[4]We question whether the respondents at the high end of the response range understood the question or accompanying instruction.

Billing Rates, Billable Hours and Non-Billable Hours

2,072 respondents provided their hourly billing rate data. Hourly billing rates ranged from less than $50 (1 respondent) to greater than $1,950 (1 respondent). The average billing rate for all respondents was $608, up $24 (+4%) from 2012 ($584). Notably, unlike compensation data, which was much more uneven across practice areas and cities, every practice area reported higher billing rates in 2014 (with IP leading the way, +10%), and nearly every city reported higher rates as well (with Philadelphia showing the largest gains at +14%), other than Atlanta and Seattle, which both showed declines of 2%.

2,061 and 2,051 respondents provided billable and non-billable hour data, respectively. Reported billable hours ranged from 1,000 hours or below (101 respondents) to 3,000 hours or more (11 respondents). Reported non-billable hours ranged from 50 hours or below (31 respondents) to 1,000 hours or more (279 respondents). The average billable hours for all respondents was 1,686 hours, virtually identical to the 1,687 reported in 2012, and non-billed time averaged 526 hours, down slightly from 530 in 2012. Interestingly, despite variations in reported billable time and non-billable time over the course of our 2010, 2012 and 2014 Surveys, the total number of hours worked has remained essentially flat (2,220 hours in 2010; 2,217 hours in 2012; and 2,212 hours in 2014). Median billable hours and non-billable hours were 1,725 and 475, respectively.

Generally speaking, the larger the firm, the higher the billing rate and the higher the number of billable and non-billable hours (although the spread in non-billable hours was much, much tighter). When sorted by PPP, the more profitable firms naturally had higher billing rates, but the variance in billable hours was much tighter among the three lowest categories before rising appreciably for each of the three higher categories. This trend was also generally true as to non-billable hours, with the three lowest PPP categories being tightly grouped before rising for the higher PPP categories, with one notable exception: once again, partners at firms with PPP in excess of $2 million reported significantly lower non-billable hours than partners in all other firm PPP categories.

Exhibit 3.1 – Average Billing Rate by Firm Size

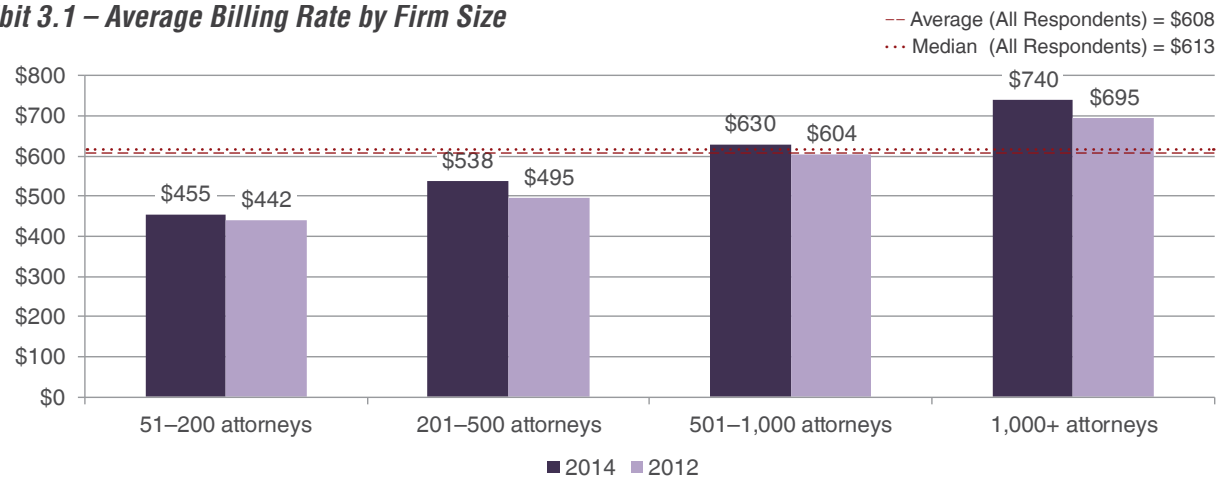


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Exhibit 3.2 – Average Billable Hours by Firm Size

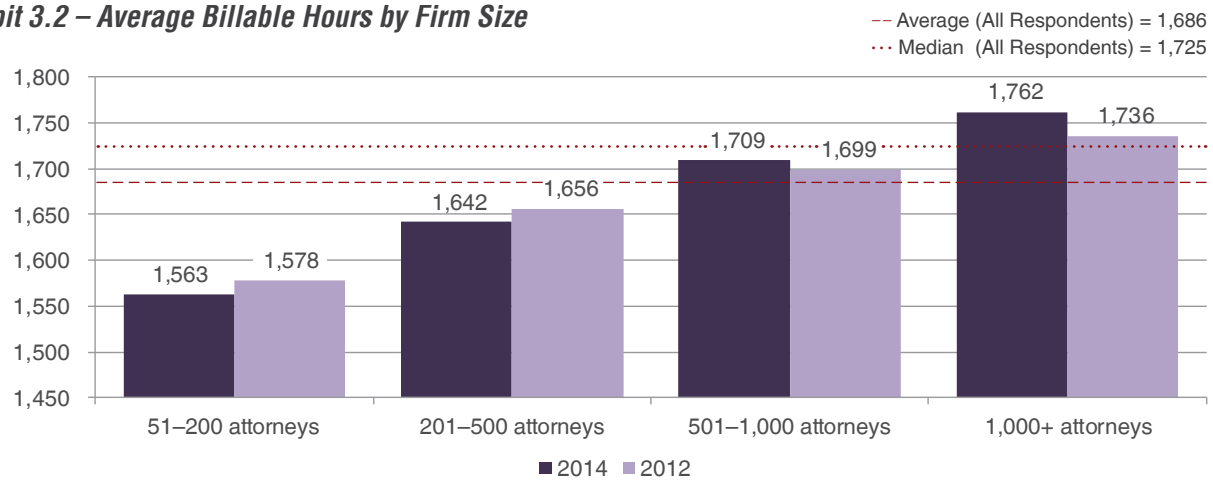
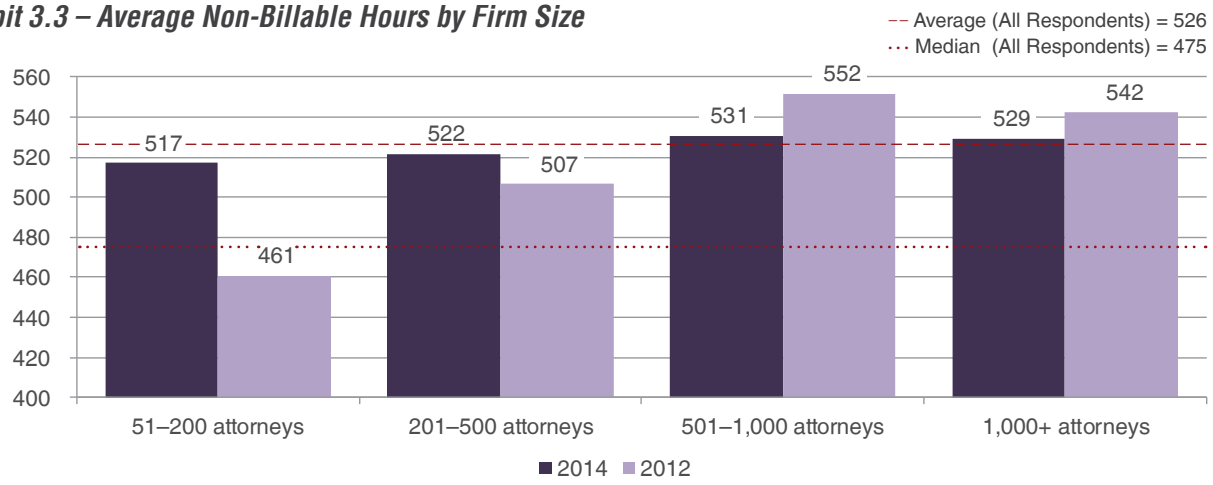


Exhibit 3.3 – Average Non-Billable Hours by Firm Size



Below are highlights of selected billing rates, billable hours and non-billable hours data.

BILLING RATES

- IP partners and Tax & ERISA partners showed the highest percentage gains in billing rates, climbing to $662 (+10%) and $680 (+8%), respectively, whereas Labor & Employment partners continued to report the lowest hourly billing rate at $505, up 7% from $473 in 2012. All practice areas showed at least a 3% increase in billing rates.
- Virtually every city reported an increase in billing rates, with the exception of Atlanta and Seattle, which both showed a 2% decrease.
- Average billing rates for male partners rose 4%, climbing from $598 in 2012 to $624 in 2014. Female partner billing rates rose 5% to $561 from $533.

BILLABLE HOURS

- For the first time since MLA began measuring this data, Non-Equity partners averaged higher billable hours than Equity partners (1,692 hours vs. 1,681 hours).

- Corporate partners showed the largest percentage gain in billable hours, up from 1,518 hours in 2012 to 1,601 in 2014 (+5%). Billable hours for Litigators, IP partners and Real Estate partners were essentially flat (+/- less than 1%), and billable hours for Tax & ERISA and Labor & Employment partners showed modest increases (+3% and +2%, respectively).
- Billable hours fell in eight of the 13 cities, with Boston posting the largest percentage decline (-8%; 1,653 in 2014 vs. 1,781 in 2012). Silicon Valley reported the highest percentage increase (+6%), rising from 1,718 to 1,826, which also represented the highest average number of billable hours for all cities.
- Male partners billed 1,702 hours in 2014, up 1% from 2012 (1,690). Female partners reported a 2% decline in billable hours, falling to 1,634 from 1,670 in 2012.

NON-BILLABLE HOURS

- Partners in the 20+ year category were the only tenure grouping to show an increase in non-billable hours, rising from 587 in 2012 to 614 in 2014 (+5%). All other tenure groupings reported lower non-billable hours, with the largest drop reported by the 6 to 10 year category (from 531 to 507; -5%).
- Equity partners continue to report higher non-billable hours than Non-Equity partners, 569 vs. 464.
- Open compensation system partners again significantly outpaced Closed compensation system partners in non-billable hours, reporting 560 non-billable hours vs. 453 hours in 2014 (versus 571 and 435, respectively, in 2012).
- Smaller firms reported an increase in non-billable hours (517 and 522 hours, respectively for firms of 51-200 attorneys (+12%) and 201-500 attorneys (+3%), respectively), versus a decline in non-billable hours for larger firms (531 and 529 hours, respectively, for firms with 501-1,000 attorneys (-4%) and 1,000+ attorneys (-2%), respectively).
- Non-billable hours of female partners rose 4%, from 490 in 2012 to 512 in 2014, vs. a 2% drop by male partners, from 541 to 531.

For the complete results, please refer to ***Appendix VI – Average Billing Rates****,* ***Appendix VII – Average Billable Hours****, and* ***Appendix VIII – Average Non-Billable Hours****.*

COMPENSATION SATISFACTION, FACTORS AND SYSTEMS

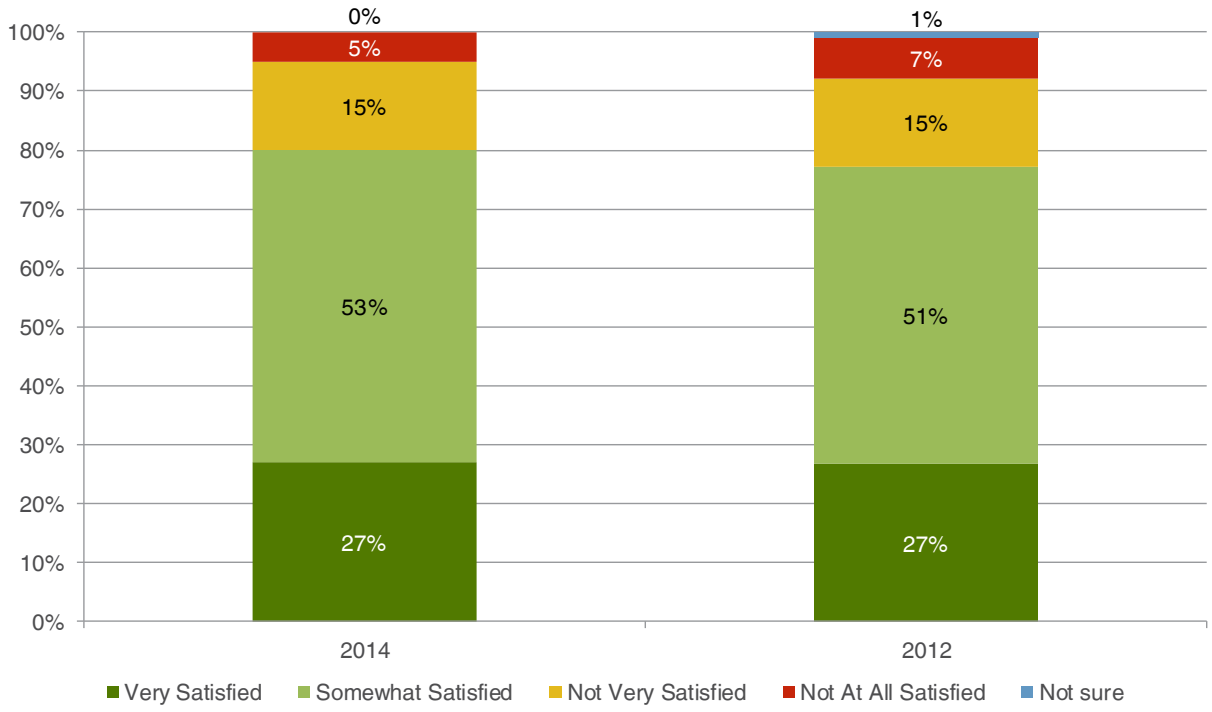
Questions 18 through 29 of the Survey dealt with compensation satisfaction and the respondents' perceptions of their compensation and compensation systems. Satisfaction data was then sorted by the following categories:

1. Partnership Tenure
2. Partnership Status
3. Practice Area
4. City
5. Lateral Status
6. Move-Related Compensation Change
7. Compensation Transparency
8. Lockstep Type
9. Total Compensation
10. Total Originations
11. Total Billable Hours
12. Firm Size
13. Firm PPP
14. Gender
15. Ethnicity

Satisfaction Ratings

Question 24 addressed compensation satisfaction. A total of 2,082 respondents answered this question. 27% classified themselves as Very Satisfied, 53% classified themselves as Somewhat Satisfied, 15% said they were Not Very Satisfied, and 5% were Not at all Satisfied. These satisfaction levels are very similar to the results of the 2010 and 2012 Surveys and to the results of our most recent **Lateral Partner Satisfaction Survey**, where 86.5% of all *lateral* partners reported that they were either Very Satisfied or Somewhat Satisfied with their current firms.

Exhibit 4.1 – Overall Satisfaction with Total Compensation



Partnership Tenure and Partnership Status

The two most senior groupings of lawyers once again were more likely to classify themselves as Very Satisfied with their compensation (29% and 37% for categories 11 to 20 years and 20+ years, respectively, versus 19% and 23% for categories 1 to 5 years and 6 to 10 years, respectively). Moreover, the chasm between Equity partners' and Non-Equity partners' compensation satisfaction remains wide. Equity partners were once again three times more likely to classify themselves as Very Satisfied than Non-Equity partners (37% vs. 12%, as compared to 36% vs. 12% in 2012), and were also much less likely to classify themselves as Not at all Satisfied (3% vs. 8%, as compared to 4% vs. 11% in 2012).

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Exhibit 4.2 – Satisfaction by Partnership Tenure

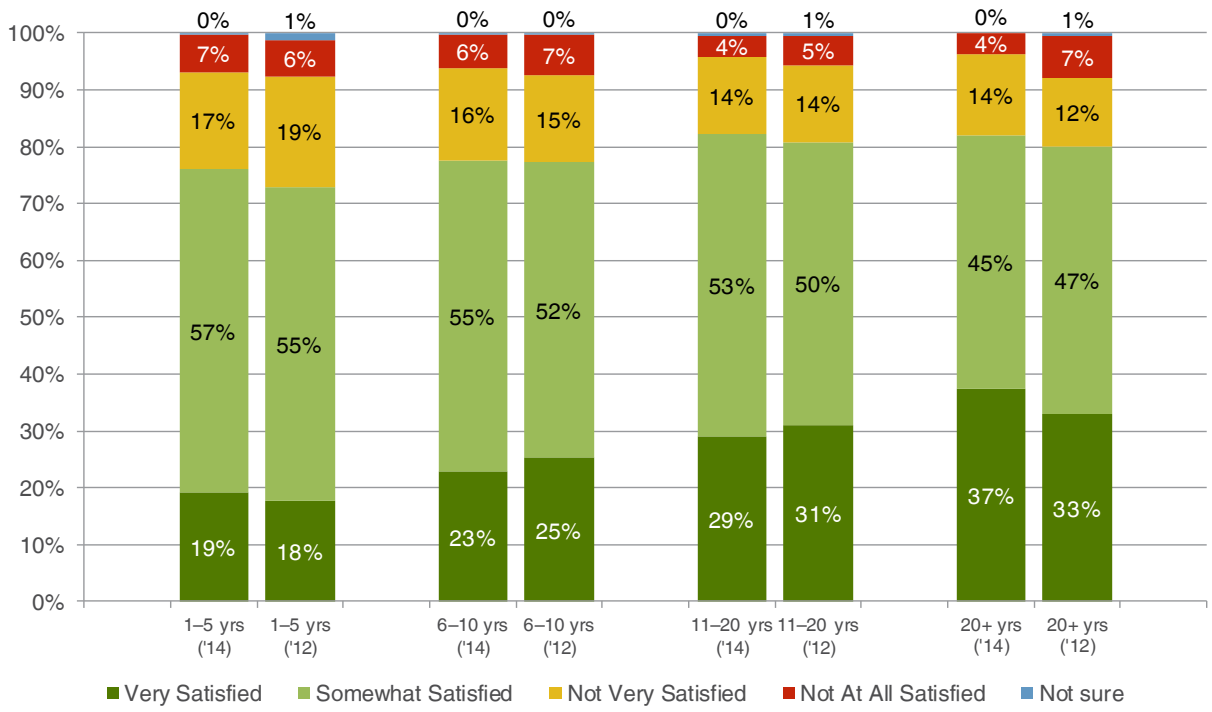
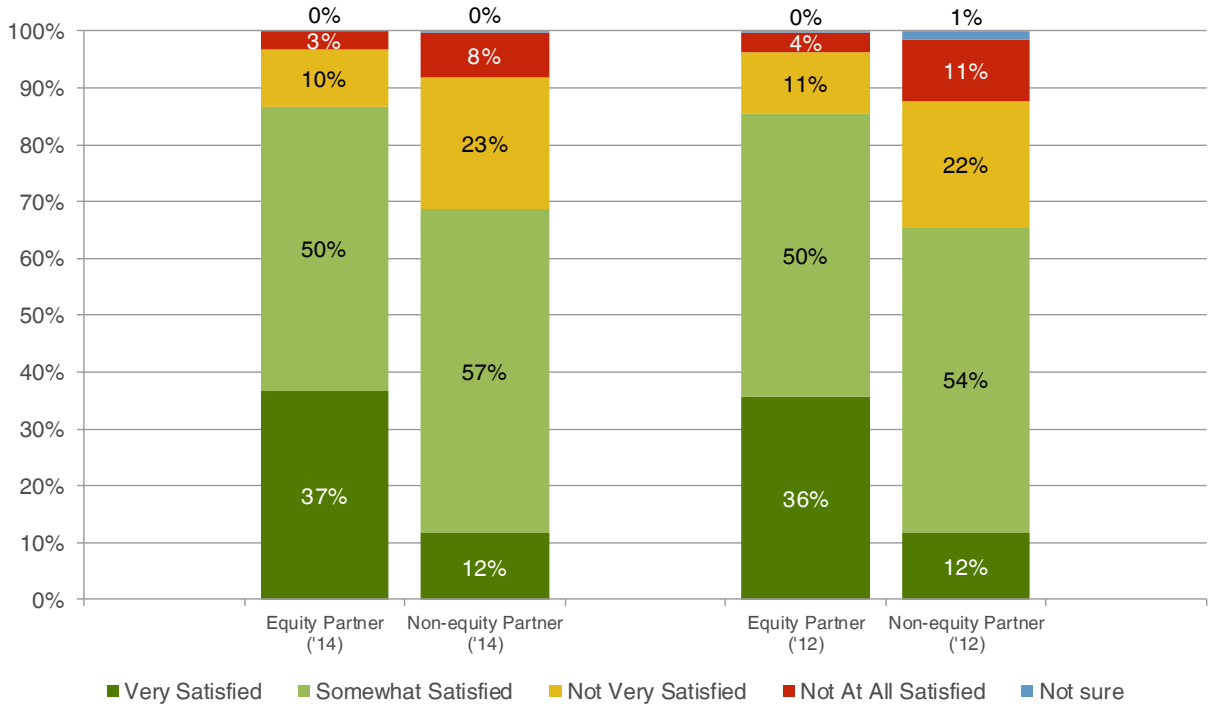


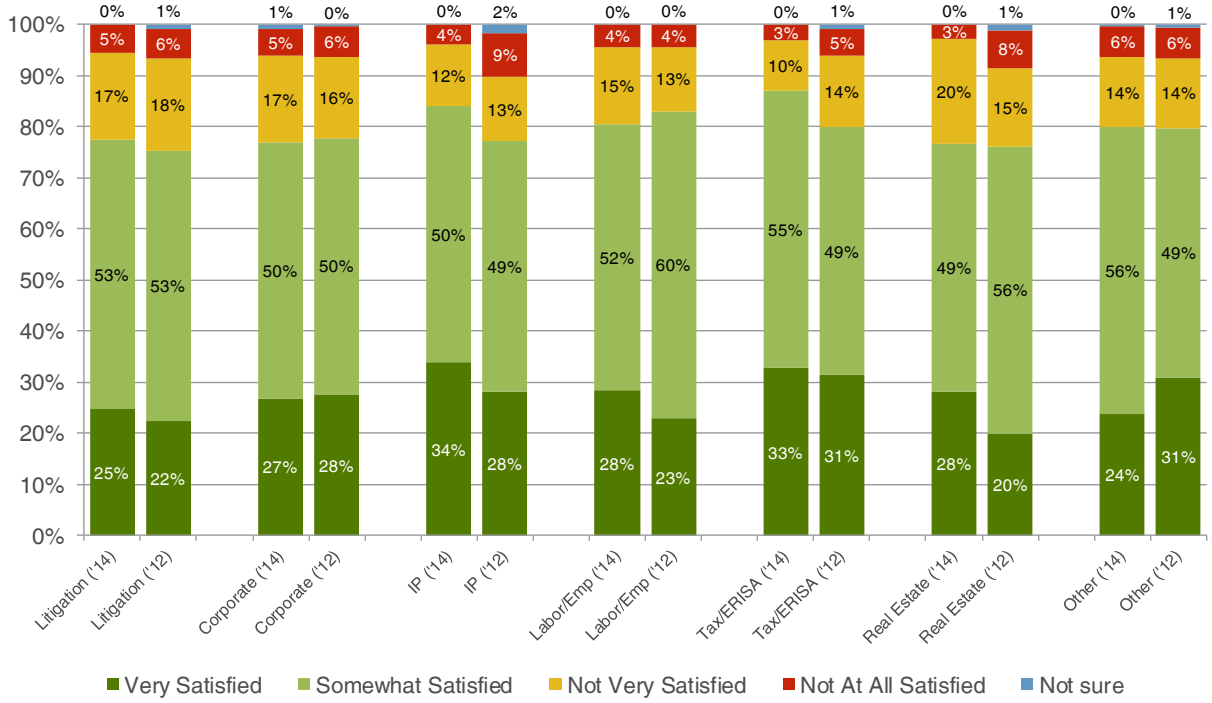
Exhibit 4.3 – Satisfaction by Partnership Status



Practice Area

Sorting the data by Practice Area, IP partners were most likely to classify themselves as Very Satisfied (34%), up strongly from 2012 (28%), whereas Litigation partners were least likely (25%), up slightly from 2012 (22%). Real Estate partners showed the strongest gains, with 28% classifying themselves as Very Satisfied in 2014 versus 20% in 2012. IP and Real Estate also showed the greatest decrease in percentage of partners classifying themselves as Not at all Satisfied, with IP falling from 9% to 4% and Real Estate falling from 8% to 3%. Tax & ERISA partners had the highest overall satisfaction rate, with 88% classifying themselves as either Very Satisfied or Somewhat Satisfied, up from 80% in 2012. The next closest were IP partners, at 84%, up from 77% in 2012.

Exhibit 4.4 – Satisfaction by Practice Area



City

Cities with high satisfaction (33% or more Very Satisfied) include Silicon Valley (36%), San Francisco (33%) and Philadelphia (33%). At the other end of the spectrum, only 18% of Seattle-based partners reported that they are Very Satisfied with their compensation, a drop of approximately 20 percentage points from 2012. Minneapolis and Silicon Valley had the highest percentage of partners classifying themselves as Not at all Satisfied (9%), with Seattle the lowest (3%, up from 0% in 2012). Unlike 2012, where five cities had 25% or more of their partners classifying themselves as either Not at all Satisfied or Not Very Satisfied, no cities hit that threshold in 2014. Philadelphia showed the strongest gains in overall satisfaction, with 80% of partners classifying themselves as either Very Satisfied or Somewhat Satisfied, up sharply from 69% in 2012. Conversely, partners in Houston and Dallas classifying themselves as either Not at all Satisfied or Not Very Satisfied rose sharply in 2014, from 8% and 9%, respectively, in 2012, to 19% and 16%, respectively, in 2014.

Exhibit 4.5a – Satisfaction by City (2014)

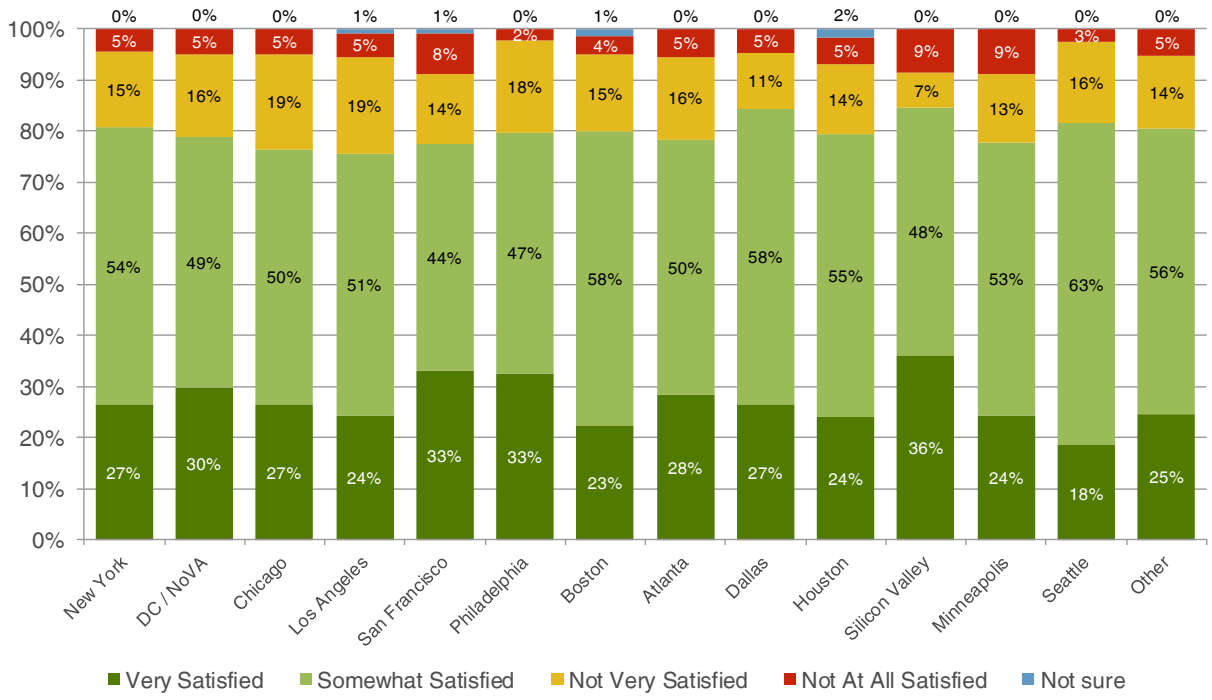
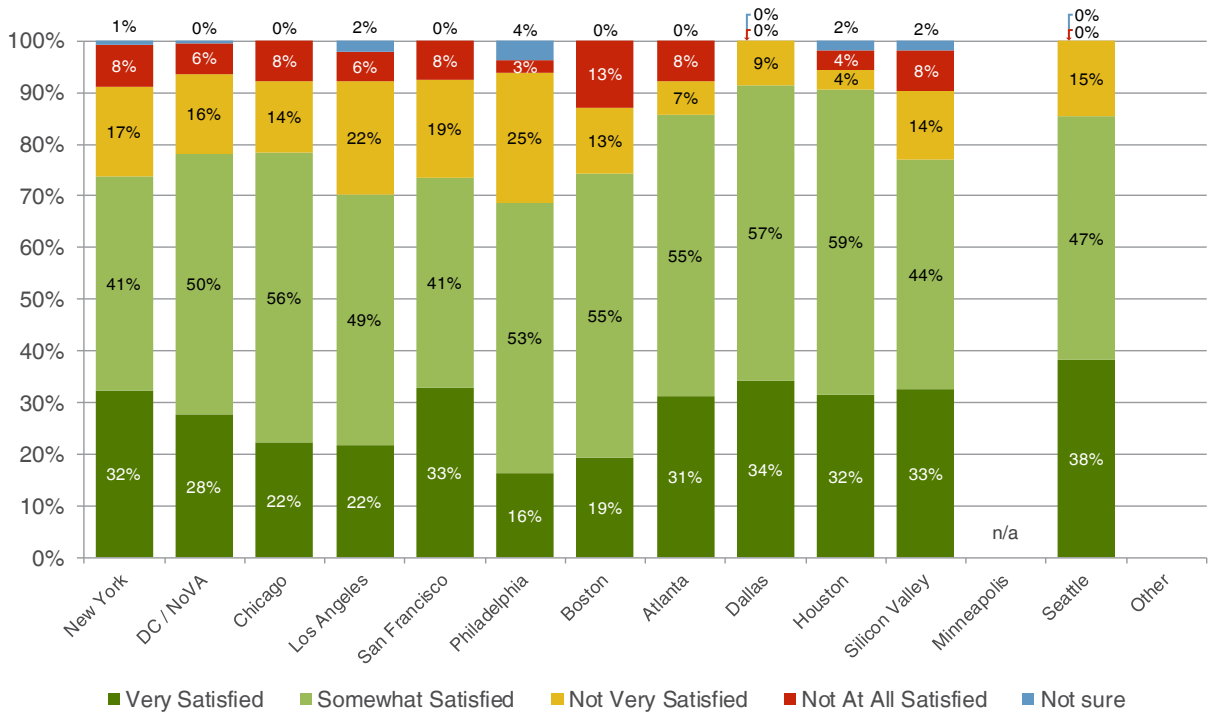


Exhibit 4.5b – Satisfaction by City (2012)



Compensation Transparency and Lateral Movement

Once again, partners in Open compensation systems were much more likely to classify themselves as Very Satisfied (32%) than partners in Partially Open (20%) or Closed (18%) compensation systems, though the gap has narrowed somewhat since our last Survey: In 2012, 34% of partners in Open systems classified themselves as Very Satisfied compared to 13% in Closed systems. Partners who joined their firms laterally as partners were also more likely to classify themselves as Very Satisfied (32%) than "home grown" partners (23%), which is generally consistent with the 2012 results (30% vs. 24%).

Exhibit 4.6 – Satisfaction by Compensation Transparency

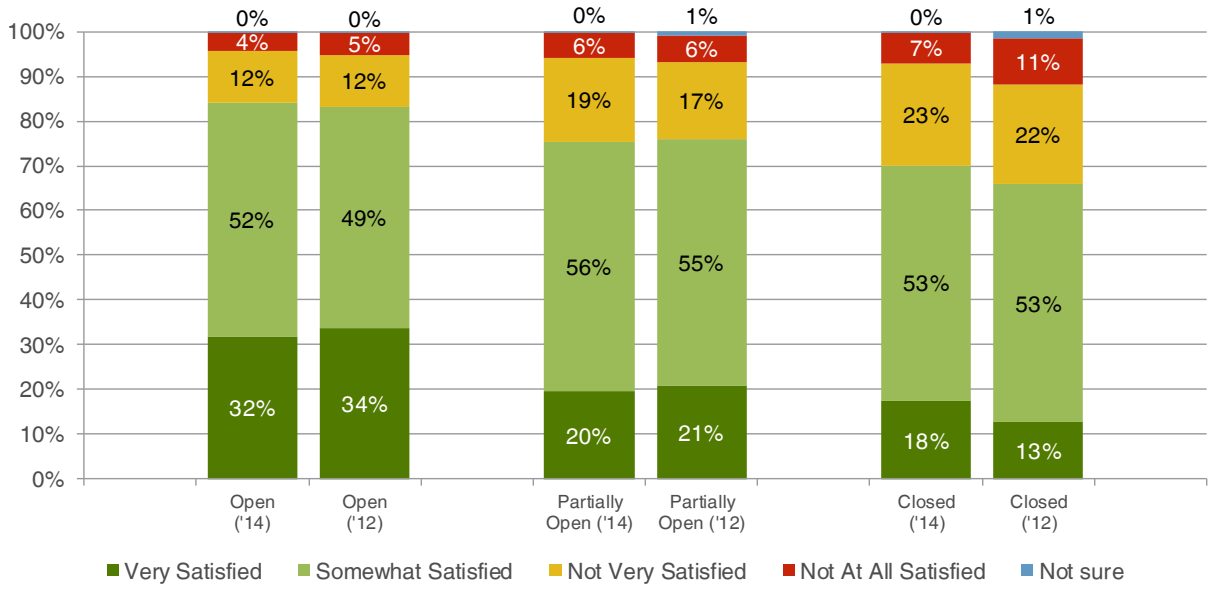
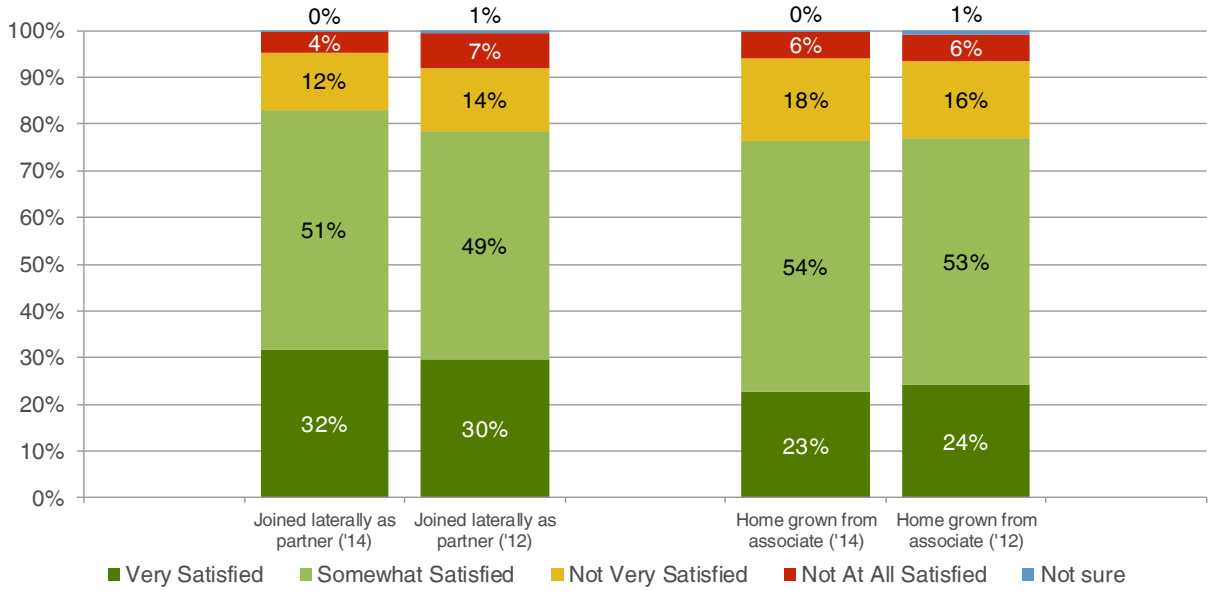


Exhibit 4.7 – Satisfaction by Lateral Movement



Total Compensation, Total Originations, Billable Hours

Not surprisingly, compensation satisfaction climbs in relation to total compensation. Once again, in 2014 we saw significantly higher levels of compensation satisfaction in the higher compensation ranges, though the percentage of partners in the $1 million to $1.5 million grouping classifying themselves as Very Satisfied fell from 54% to 47%. The relationship between compensation satisfaction and originations mirrors that of compensation, with satisfaction levels rising steadily as originations increase, though the groupings are somewhat tighter on both ends of the scale (*i.e.*, Very Satisfied and Not at all Satisfied). When sorted by billable hours, the spread between groupings is narrower, although it is interesting to note that partners in the higher billable hour groupings have higher levels of compensation satisfaction.

Exhibit 4.8 – Satisfaction by Total Compensation

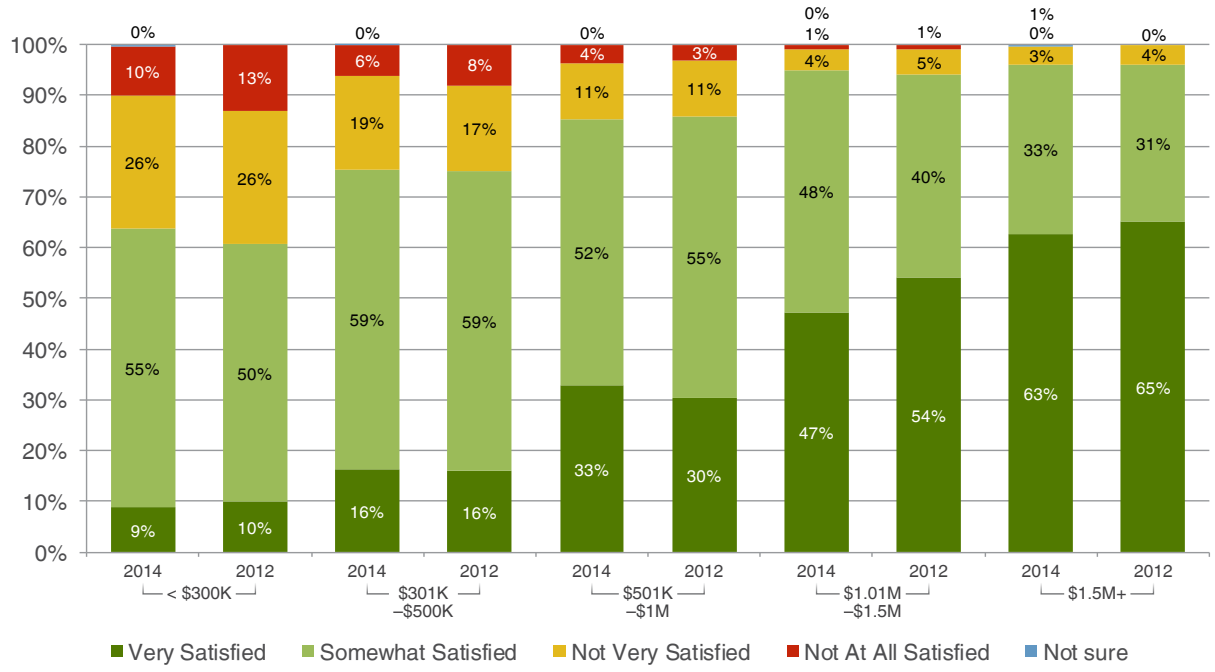


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Exhibit 4.9 – Satisfaction by Total Originations

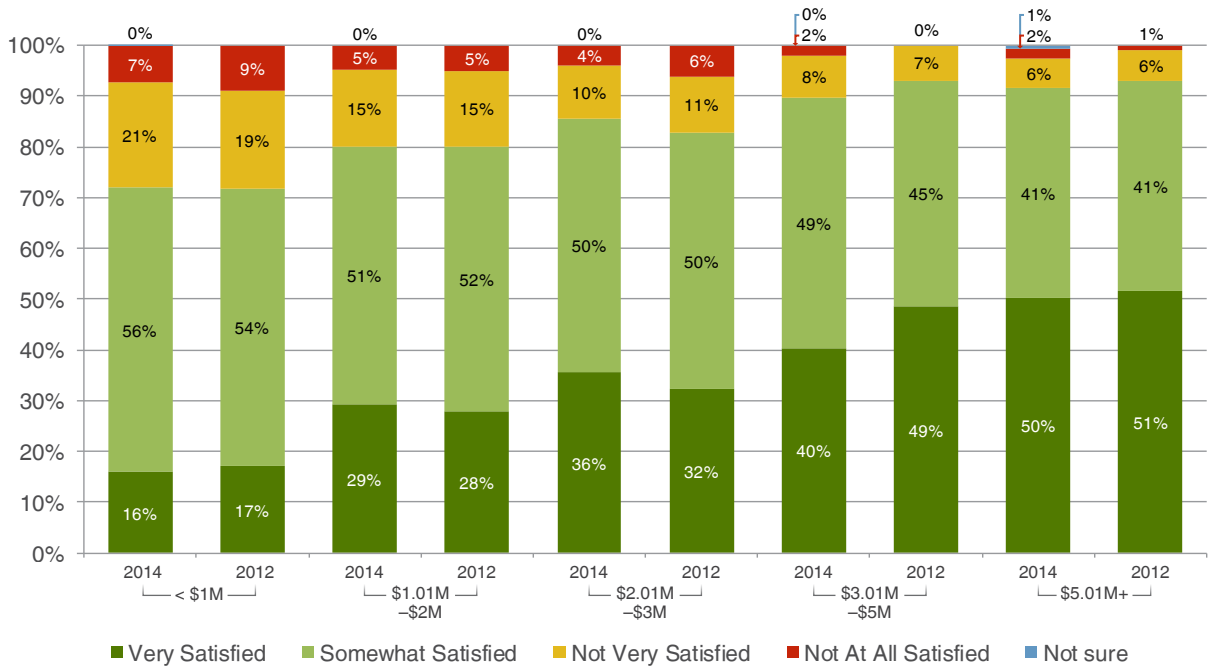
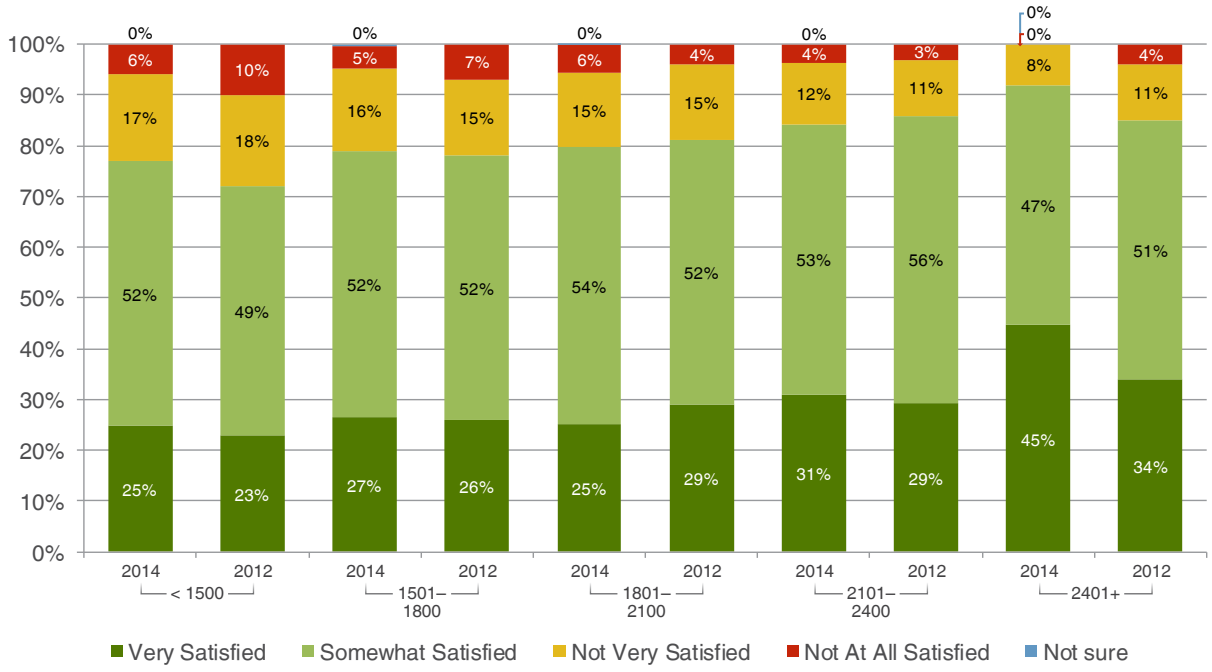


Exhibit 4.10 – Satisfaction by Billable Hours



Firm Size and Firm PPP

Although Firm Size seemed to have no significant bearing on compensation satisfaction in 2012, in 2014 partners at larger firms were more likely to classify themselves as Very Satisfied than those at smaller firms. Similarly, partners at firms with higher PPP generally were more likely to classify themselves as Very Satisfied and less likely to say they were Not Very Satisfied or Not at all Satisfied, which generally is consistent with the 2012 results, with the exception of firms at the lowest end of PPP, which also showed a large increase in Very Satisfied partners.

Exhibit 4.11 – Satisfaction by Firm Size

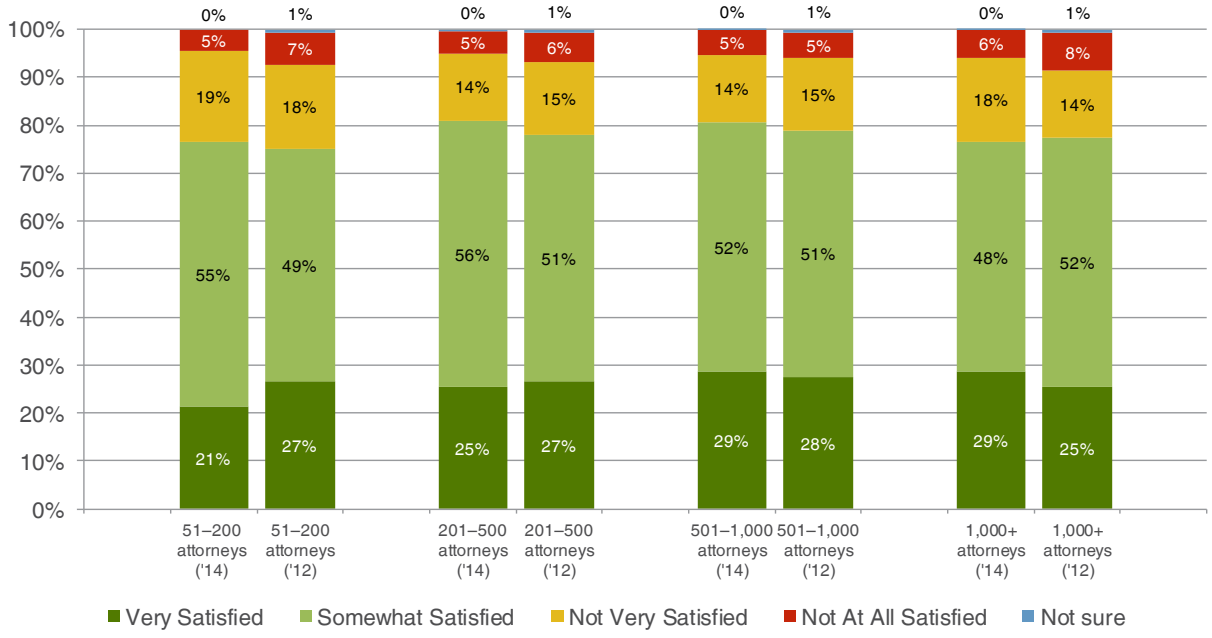


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Exhibit 4.12a– Satisfaction by Firm PPP (2014)

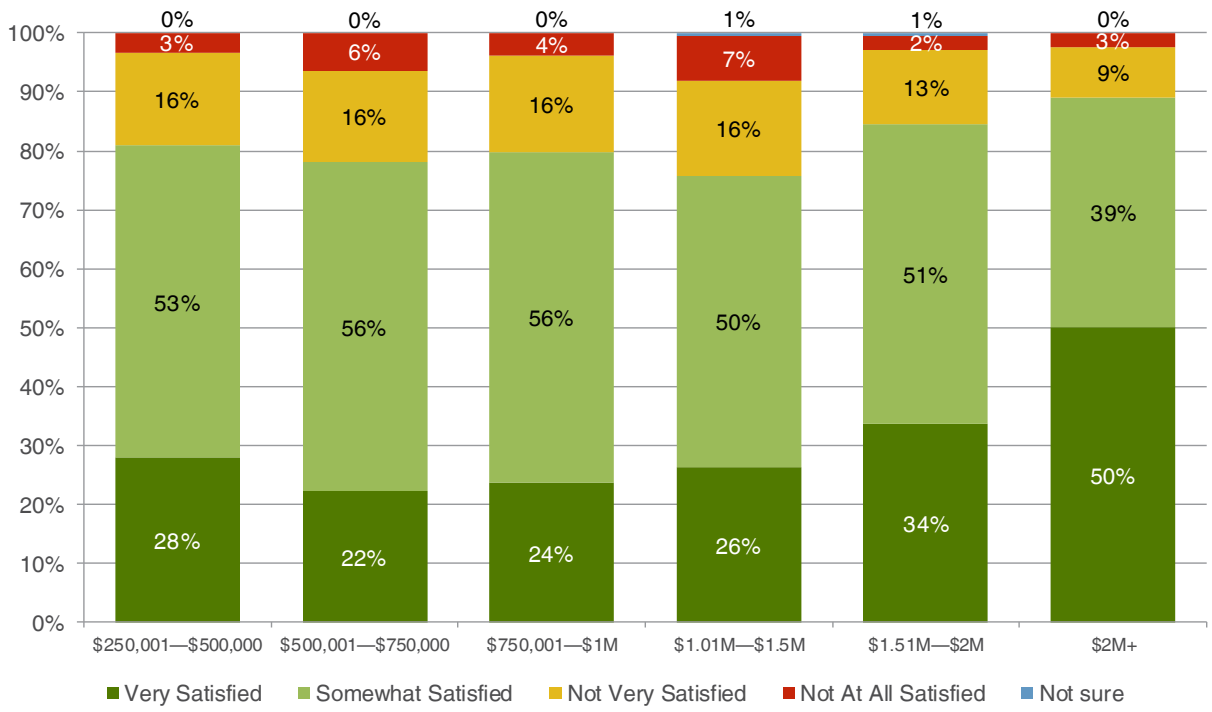
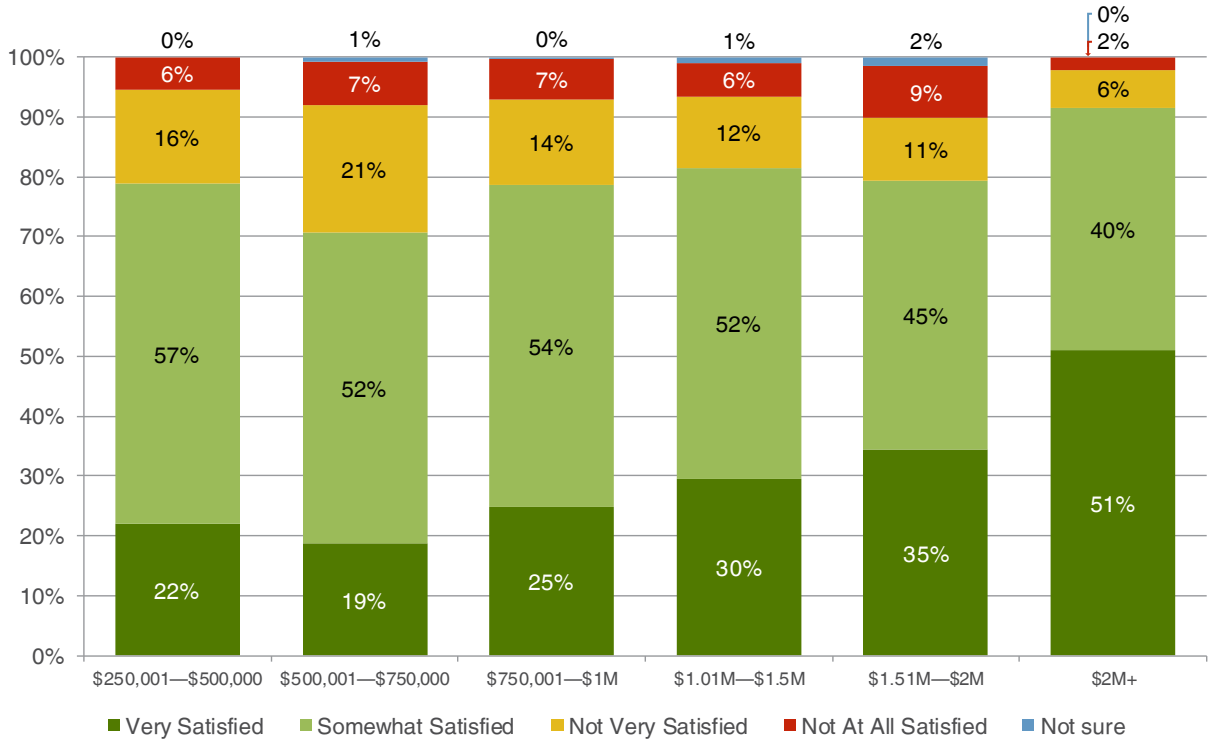


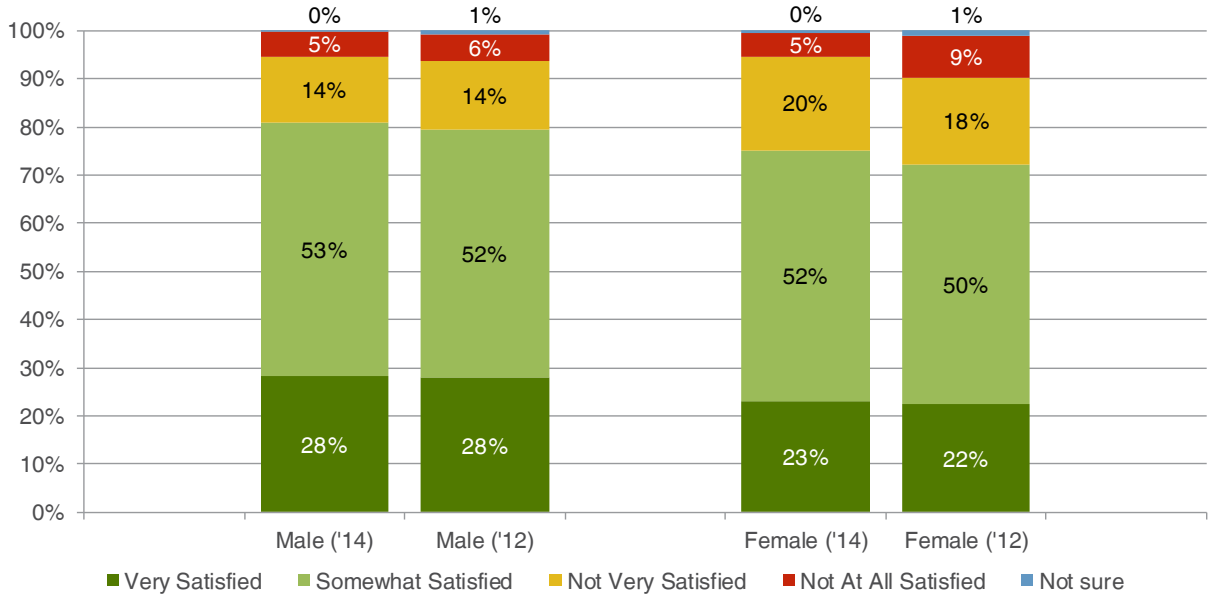
Exhibit 4.12b– Satisfaction by Firm PPP (2012)



Gender and Ethnicity

In 2014, 28% of males reported that they were Very Satisfied with their compensation, compared to 23% of females. These results are virtually identical to the 2012 results. At the opposite end, in 2012, 6% of males and 9% of females reported that they were Not at all Satisfied with their compensation, both of which have fallen slightly, to 5% and 5%, respectively, in 2014. However, while the change from 2012 to 2014 is not dramatic, the change from the dark days of 2010 is more striking, when 16% of males and 19% females classified themselves as Not at all Satisfied.

Exhibit 4.13 – Satisfaction by Gender



The level of satisfaction among White partners was generally consistent with the 2012 results, with 28% classifying themselves as Very Satisfied and only 4% classifying themselves as Not at all Satisfied (compared to 27% and 6%, respectively, in 2012). Conversely, the level of satisfaction among Black partners dropped precipitously in 2014, with only 14% classifying themselves as Very Satisfied and 43% classifying themselves as Somewhat Satisfied, compared to 24% and 52%, respectively, in 2012. Similarly, while nearly an equal number of Hispanic partners classified themselves as Very Satisfied in 2014 as in 2012 (24% versus 27%), the percentage of partners classifying themselves as Not Very Satisfied or Not at all Satisfied rose from 9% and 6%, respectively, in 2012 to 20% and 12%, respectively, in 2014. While Asian Pacific partners had a higher percentage of partners classifying themselves a Very Satisfied in 2014 (24%) compared to 2012 (19%), the percentage of partners classifying themselves as Not Very Satisfied or Not at all Satisfied rose from 15% and 8%, respectively, in 2012 to 22% and 10%, respectively, in 2014. Partners classifying themselves as Mixed Races also showed strong gains in satisfaction, with 25% and 58% classifying themselves as Very Satisfied or Somewhat Satisfied, respectively, compared with 15% and 40%, respectively, in 2012. Notably, only 17% classified themselves as Not Very Satisfied, compared to 25% in 2012, and *no* partners classified themselves as Not Very Satisfied in 2014, compared to 15% in 2012[4].

[4]Again, it is difficult to draw meaningful conclusions for the non-White categories because of the relatively small number of respondents.

Exhibit 4.14a – Satisfaction by Ethnicity (2014)

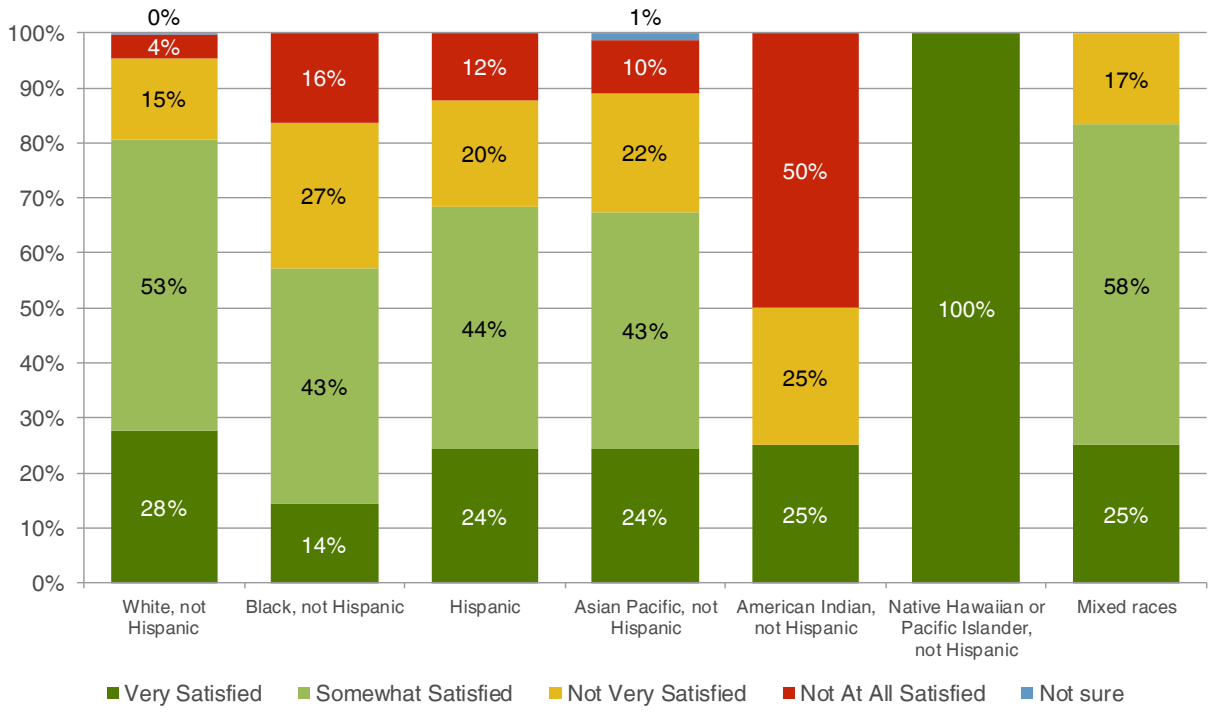
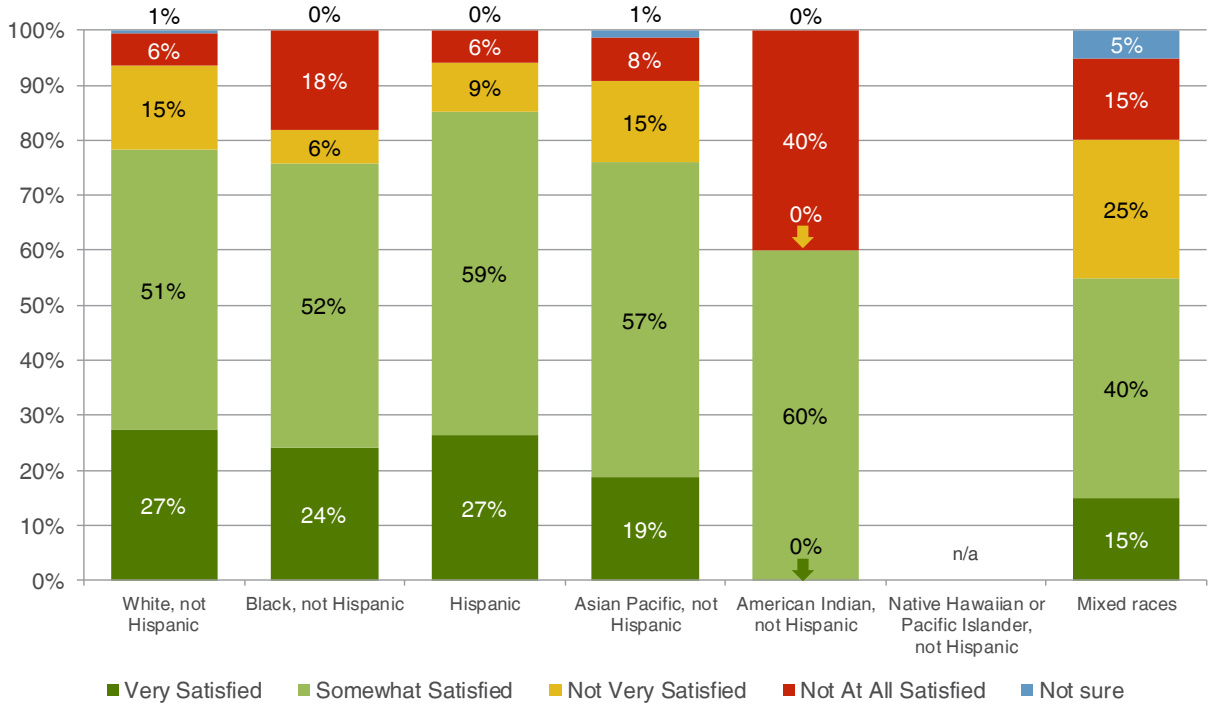


Exhibit 4.14b – Satisfaction by Ethnicity (2012)



Compensation Satisfaction and Perceived Bias

Respondents who answered Not Very Satisfied or Not at all Satisfied to Question 24 were then asked if their lack of satisfaction was attributable to any biases on the part of their firms, such as cronyism, gender bias, racial bias, sexual orientation bias and bias against laterals. A total of 386 respondents answered this question.

Approximately 30% of the respondents attributed their lack of compensation satisfaction to cronyism, with that factor once again (35% in 2012) outpacing all of the other enumerated reasons combined (although 36% percent answered Not Sure and 17% answered Other Reason). While perceived cronyism remains high, it is worth noting that the percentage has fallen from 40% when we first measured it in 2010. 12% of respondents cited gender bias (up slightly from 11% in 2012), followed by racial bias (2%, up from 1% in 2012), bias against laterals (2%, even from 2012), and sexual orientation bias (1%, down from 2% in 2012).

For the complete results, please refer to ***Appendix IX – Satisfaction with Total Compensation.***

Desire for Higher Compensation

Questions 26 and 27 of the Survey asked respondents whether they thought their total compensation should be higher and, if so, by what percentage. A total of 2,072 respondents answered the question, with 55% answering that they believed it should be higher (vs. 58% in 2012) and 45% answering that they felt their current compensation was about right (vs. 43% percent in 2010). Of those who felt that their compensation should be higher, 10% believed their compensation should be between 0-10% higher, 46% believed it should be between 11-20% higher, 29% believed it should be between 21-30% higher, 7% believed it should be between 31-40% higher and 4% believed it should be between 41-50% higher. The remaining 4% of respondents believed their compensation should be between 51% to greater than 100% higher. Once again, these numbers are *virtually identical* to our prior Survey results.

Exhibit 5.1 – Satisfaction with Compensation Level

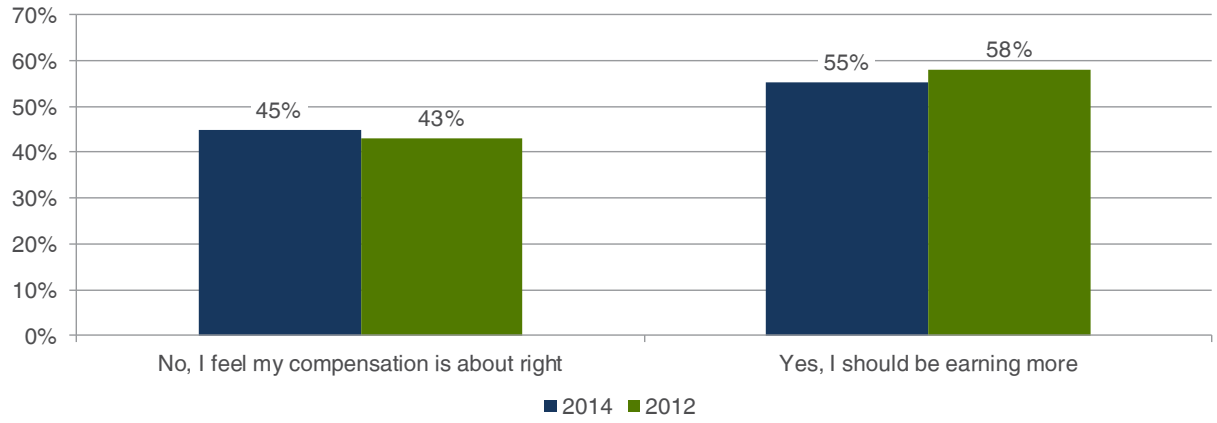


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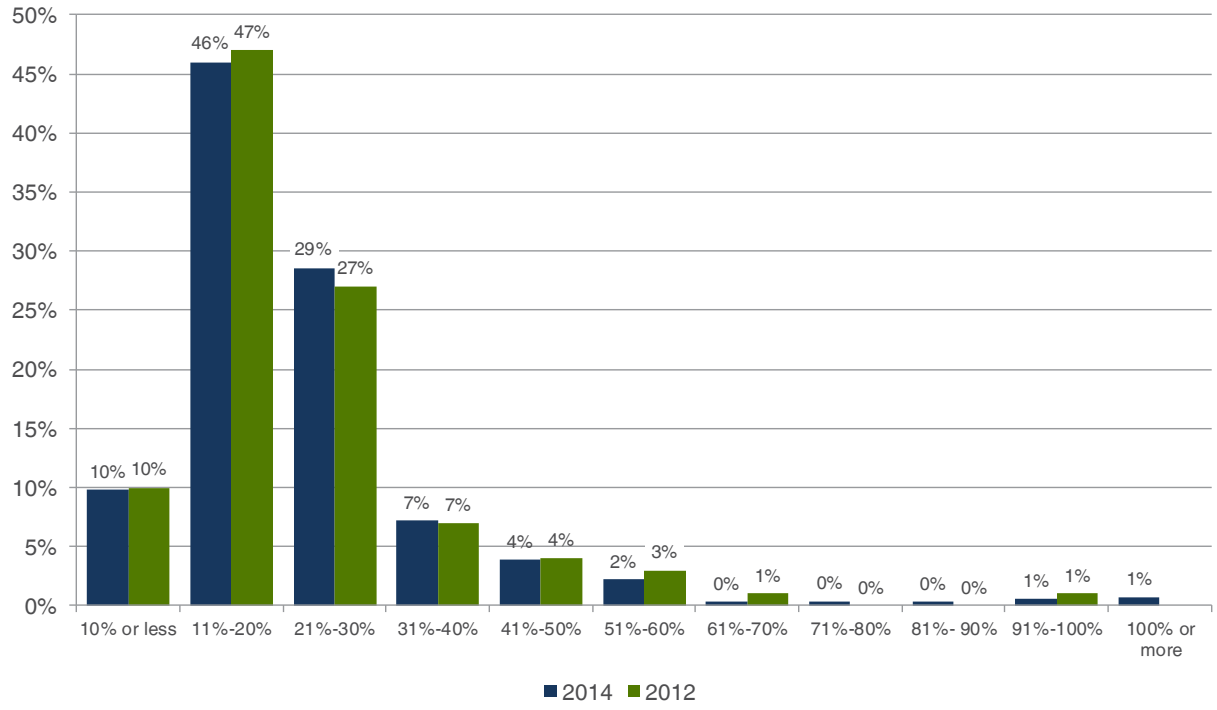
Exhibit 5.2 – Level of Compensation Desired (Percentage Increase)



For the complete results, please refer to ***Appendix X – Desired Compensation.***

IMPORTANCE OF FACTORS IN DETERMINING COMPENSATION

Questions 18 through 23 of the Survey sought subjective information from respondents about their perception of factors they felt were important to their firms in determining compensation. Questions 28 and 29 asked respondents whether they'd like to see a change in compensation methods and, if so, what changes they would like to see.

Perceived Importance of Factors

In Question 18, respondents ranked the importance of nine factors as Very Important, Somewhat Important, Not Very Important or Not at all Important in determining compensation (responses for each individual importance rating can be found in Appendix XI). Approximately 2,057 respondents answered this question. Of the nine enumerated factors, originations had the highest percentage (74%) of Very Important ratings, followed by WAR (59%) and billable hours (39%). The next highest factor was realization rate at only 25%. Not surprisingly, once again non-billable hours received the lowest number of Very Important ratings, at just 2%. These numbers are virtually identical to the 2012 results.

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Exhibit 6.1a – Importance of Factors Determining Compensation (2014)

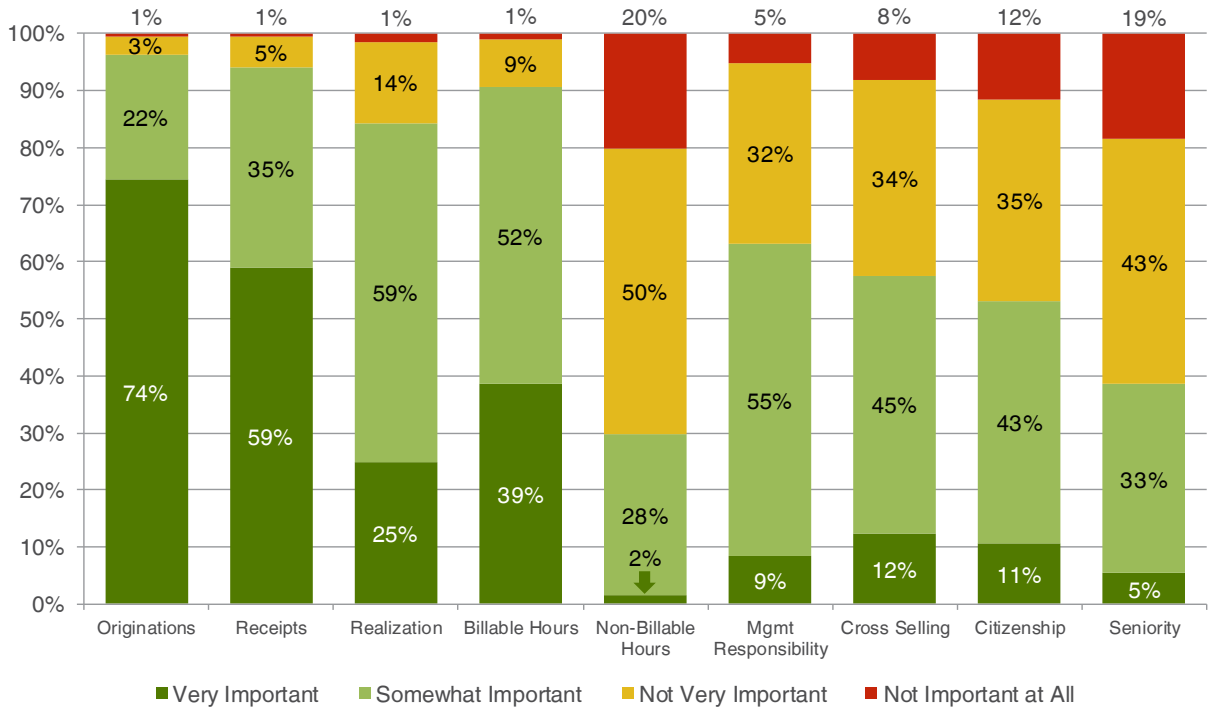
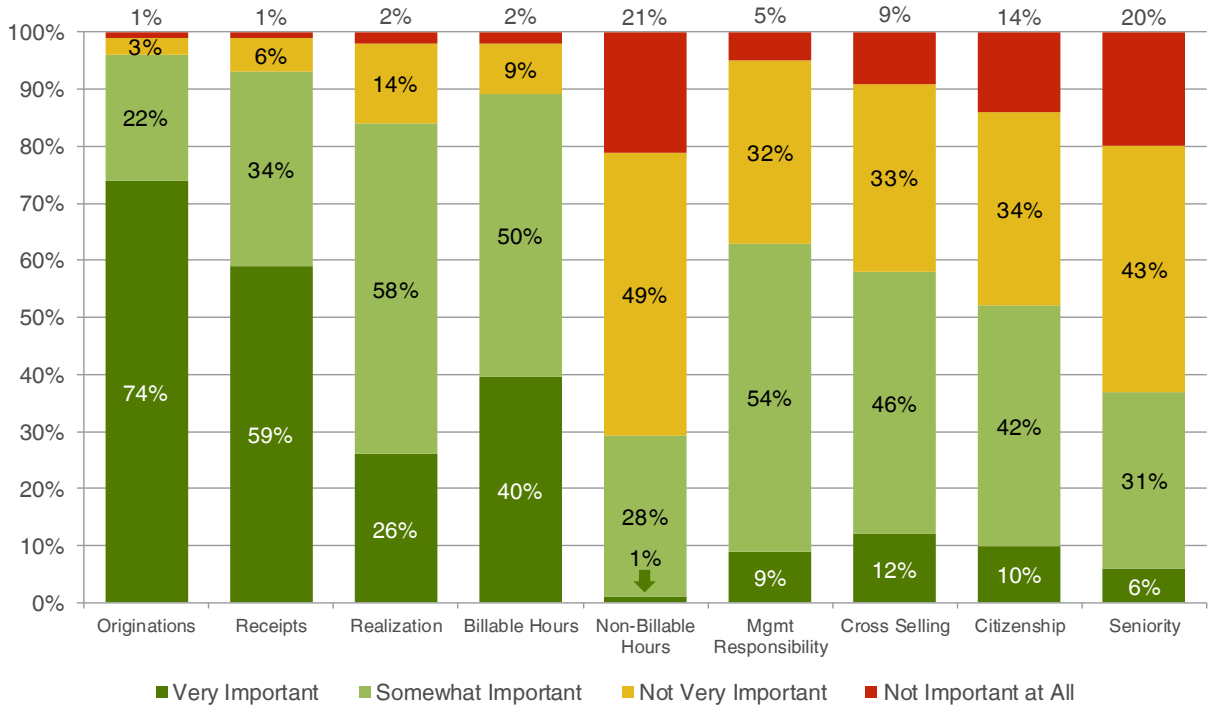


Exhibit 6.1b – Importance of Factors Determining Compensation (2012)



In Questions 19 and 20, respondents were asked what factor was perceived by them to be most important in determining compensation, and what factor did they believe *should be* most important. Once again, originations was the most frequently chosen of the listed response options, with 66% perceiving it to be most important and 56% saying it should be most important. WAR was the second most cited, at 21% and 26%, respectively. No other factor received more than 8%. These responses are also virtually identical to the percentage breakdown we saw in the 2012 Survey.

Exhibit 6.2a – Perceived Importance of Factors Determining Compensation (2014)

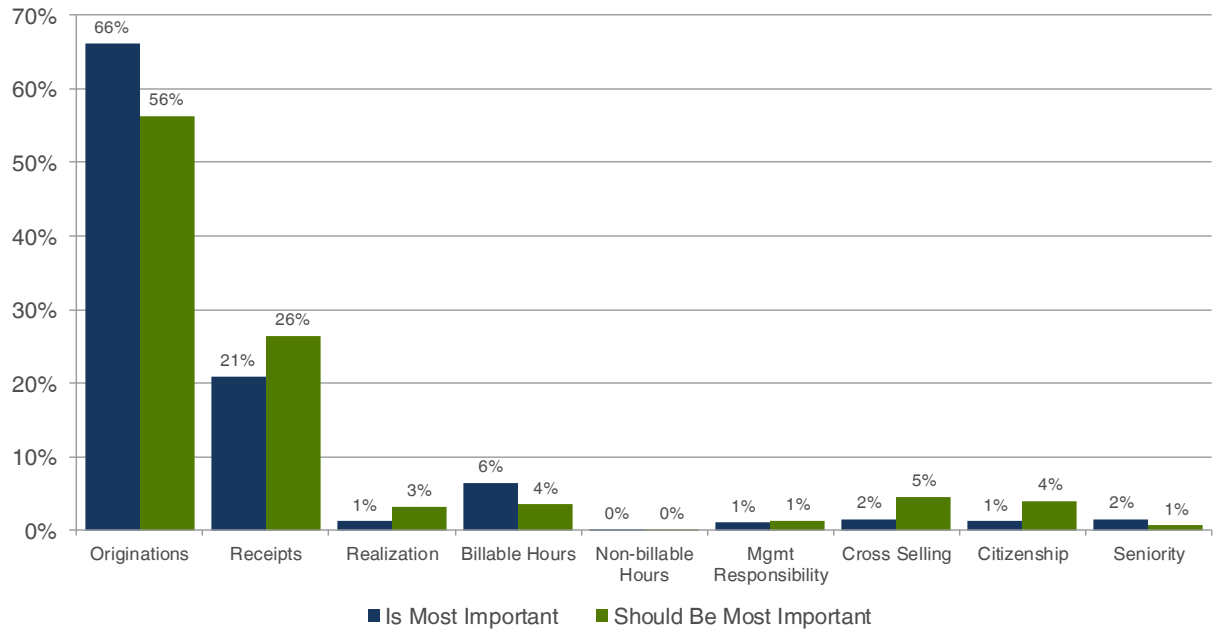
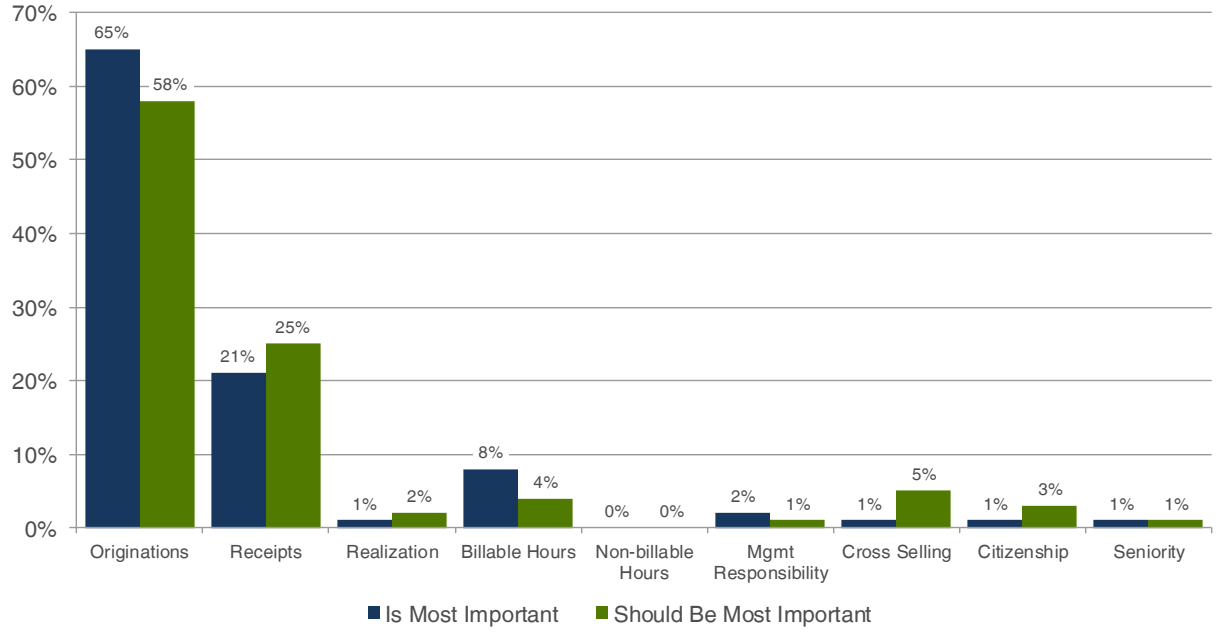


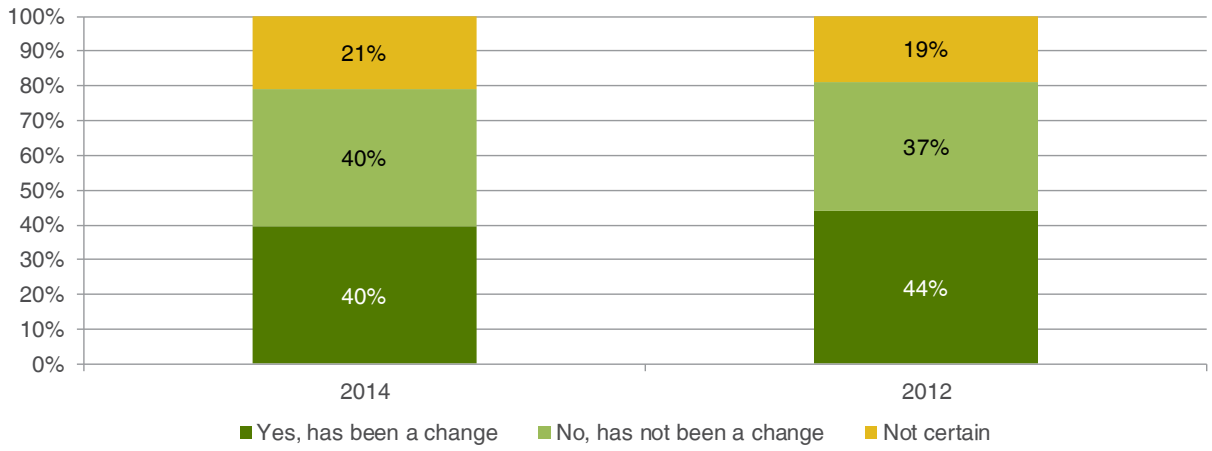
Exhibit 6.2b – Perceived Importance of Factors Determining Compensation (2012)



Perceived Change in Importance of Factors

In Question 21, respondents were asked whether there has been a change in the importance of various factors in determining compensation. Of the 2,036 respondents to this question, 40% believed that there had been a change, 40% felt that there had not been a change, and 21% were not certain. These results are generally consistent with the 2012 Survey (44%, 37% and 19%, respectively).

Exhibit 6.3 – Change in Importance of Factors Determining Compensation



When asked in Question 22 to name those factors which respondents believed had become more important, 55% of the 1,778 respondents cited originations, 32% cited WAR, 29% billable hours and 28% realization rate. These results are virtually identical to the 2012 results. Once again, seniority (50%), good citizenship (44%) and non-billable hours (35%) were cited most often as factors that were becoming less important, which results are also nearly identical to the 2102 results.

DESIRE FOR CHANGE IN COMPENSATION METHODS

Questions 28 and 29 asked respondents whether they'd like to see a change in compensation methods and, if so, what changes they'd like to see. Of the 2,083 respondents to Question 28, 65% said they would like to see a change in compensation methods, 19% did not desire any changes and the remainder were not sure. These results generally track the 2012 Survey. Of the 1,150 respondents who were in favor of change and offered suggested changes, these suggestions once again included:

- Increased transparency
- More recognition for good citizenship and team work
- More appreciation for cross-selling
- Less emphasis on originations
- Less emphasis on billable hours/working attorney receipts
- Less value placed on firm management
- Greater value given to specialized practices
- More consideration for non-billable hours
- Reducing compensation of non-performing lawyers faster
- Less cronyism

For the complete results, please refer to ***Appendix XI – Importance of Factors Determining Compensation; Desire for Changes***.

The individual responses are also examined in greater detail by Ron Nye, Managing Partner of MLA's Chicago office, in his corollary article to this Report, ***Changes Law Firm Partners Would Like to See in Their Compensation Systems***.

Survey participants, managing partners and other members of firm management who desire a more detailed briefing on the results of the Survey and this Report may contact Jeffrey A. Lowe, Global Practice Leader, Law Firm Practice, and Managing Partner, Washington, D.C., at **jlowe@mlaglobal.com** or 202-628-0661. For a listing of all Major, Lindsey & Africa offices, please visit our website at **www.mlaglobal.com**.

NOTES

About the Author

Jeffrey A. Lowe is the Global Practice Leader of Major, Lindsey & Africa's Law Firm Practice Group, the Managing Partner of MLA's Washington, D.C. office, and the leader of the Washington, D.C. Partner Practice Group. His practice focuses on the representation of high-profile law firm partners and groups as well as high-ranking government officials. He is widely regarded as one of the leading partner recruiters and advisors in the United States. In addition to being the creator and author of the ***2010***, ***2012*** and *2014 Partner Compensation Surveys,* he is also the co-author of the **2014 Major, Lindsey & Africa Lateral Partner Satisfaction Survey.** He is regularly quoted by leading legal newspapers and periodicals, such as *The American Lawyer*, *Businessweek*, *Law 360* and *The Wall Street Journal*, and his articles have been published in the *D.C. Legal Times; The New York Law Journal; The National Law Journal;* the *Law Firm Partnership & Benefits Report;* and the *Texas Lawyer*.

Prior to opening the Washington, D.C. office of Major, Lindsey & Africa in 2003, Jeffrey was a partner in the Washington, D.C. office of Hogan & Hartson L.L.P. (now HoganLovells). He joined Hogan & Hartson L.L.P. in 1991 and was elected to the partnership in 1998. In 1994-1995, Jeffrey worked in Tokyo, Japan with Mori Sogo Law Offices (now Mori Hamada & Matsumoto), one of Japan's leading international and domestic law firms.

About Major, Lindsey & Africa

Founded in 1982, Major, Lindsey & Africa is the world's largest and most highly rated legal search firm. Combining local market knowledge and a global recruiting network, MLA has earned recognition for its track record of successful General Counsel, Corporate Counsel, Partner, Associate and Law Firm Management placements. MLA rounds out its suite of legal human capital solutions for both law firms and companies by providing highly-specialized, temporary legal staffing. MLA recruiters, in 21 offices

throughout the U.S., Hong Kong, London and Tokyo, are dedicated to understanding and meeting clients' and candidates' needs while maintaining the highest degree of professionalism and confidentiality. MLA considers every search a diversity search and has been committed to diversity in the law since its inception. For all of these reasons, MLA was voted "Best Legal Recruiter in the U.S." in a recent survey of The National Law Journal readers.

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The author gratefully acknowledges the assistance of Jennifer Tonti, former Senior Research Director at ALM Legal Intelligence, and Matthew J. Smith, Data Analyst at ALM Legal Intelligence, in the compilation of survey data and statistical analysis for this third edition of the Partner Compensation Survey. The author also recognizes with deep appreciation the editorial assistance of Nam Kim, Office Administration Manager in the Washington, D.C. office of MLA, for her invaluable assistance in the creation of all three editions of the Partner Compensation Survey, and the assistance of Clare Brilliant, MLA Marketing Manager, and Lauren Berry, Graphic Designer at Allegis Group, for their ability to turn pages and pages of data into a work of art.

APPENDICES

APPENDIX I – RESPONDENT PROFILE

*Respondents by **Partnership Tenure***

	FREQUENCY	PERCENT
1–5 years	574	28%
6–10 years	478	23%
11–20 years	563	27%
20+ years	475	23%
TOTAL	2,090	

*Respondents by **Partnership Status***

	FREQUENCY	PERCENT
Equity Partner	1248	60%
Non-equity Partner	834	40%
TOTAL	2,082	

*Respondents by **Practice Area***

	FREQUENCY	PERCENT
Litigation	558	27%
Corporate	366	18%
IP	252	12%
Labor & Employment	161	8%
Tax & ERISA	102	5%
Real Estate	103	5%
Other	552	26%
TOTAL	2,094	

*Respondents by **City***

	FREQUENCY	PERCENT
New York	265	13%
DC / NoVA	241	12%
Chicago	230	11%
Los Angeles	131	6%
San Francisco	115	6%
Philadelphia	89	4%
Boston	80	4%
Atlanta	74	4%
Dallas	65	3%
Houston	59	3%
Silicon Valley	58	3%
Minneapolis	45	2%
Seattle	38	2%
Other	604	29%
TOTAL	2,094	

*Respondents by **Lateral Status***

	FREQUENCY	PERCENT
Laterally as partner	956	46%
Home grown from associate	1130	54%
TOTAL	2,086	

*Respondents by **Compensation Transparency***

	FREQUENCY	PERCENT
Open	1,273	61%
Partially Open	268	13%
Closed	532	26%
TOTAL	2,073	

*Respondents by **Lockstep Type***

	FREQUENCY	PERCENT
Pure lockstep	14	1%
Generally lockstep	280	13%
Not lockstep at all	1794	86%
TOTAL	2,088	

*Respondents by **Total Compensation***

	FREQUENCY	PERCENT
< $300K	470	23%
$300,001–$500,000	626	30%
$500,001–$1M	574	28%
$1.01M–$1.5m	197	10%
$1.51M+	201	10%
TOTAL	2,068	

*Respondents by **Firm Size***

	FREQUENCY	PERCENT
51–200 attorneys	240	12%
201–500 attorneys	605	29%
501–1,000 attorneys	775	37%
1,000+ attorneys	461	22%
TOTAL	2,081	

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*Respondents by **Firm PPP***

	FREQUENCY	PERCENT
$250,001—$500,000	183	9%
$500,001—$750,000	393	19%
$750,001—$1M	366	18%
$1.01M—$1.5M	520	25%
$1.51M—$2M	220	11%
$2M+	121	6%
Unknown	291	14%
TOTAL	2,094	

*Respondents by **Gender***

	FREQUENCY	PERCENT
Male	1555	75%
Female	515	25%
TOTAL	2,070	

*Respondents by **Ethnicity***

	FREQUENCY	PERCENT
White, not Hispanic	1854	91%
Black, not Hispanic	49	2%
Hispanic	41	2%
Asian Pacific, not Hispanic	74	4%
American Indian, not Hispanic	4	0%
Native Hawaiian or Pacific Islander, not Hispanic	1	0%
Mixed races	24	1%
TOTAL	2,047	

APPENDIX II – AVERAGE TOTAL COMPENSATION

Partnership Tenure

	2014	2012
1–5 years	$378,000	$399,000
6–10 years	$628,000	$633,000
11–20 years	$885,000	$790,000
20+ years	$1,015,000	$926,000

Partnership Status

	2014	2012
Equity Partner	$971,000	$896,000
Non-equity Partner	$338,000	$335,000

Practice Area

	2014	2012
Litigation	$700,000	$634,000
Corporate	$893,000	$847,000
IP	$855,000	$715,000
Labor & Employment	$503,000	$506,000
Tax & ERISA	$832,000	$662,000
Real Estate	$573,000	$590,000
Other	$620,000	$668,000

City

	2014	2012
New York	$1,106,000	$1,020,000
DC / NoVA	$787,000	$798,000
Chicago	$688,000	$575,000
Los Angeles	$825,000	$667,000
San Francisco	$662,000	$723,000
Philadelphia	$697,000	$478,000
Boston	$750,000	$775,000
Atlanta	$701,000	$683,000
Dallas	$624,000	$768,000
Houston	$782,000	$791,000
Silicon Valley	$1,167,000	$1,200,000
Minneapolis	$463,000	--
Seattle	$438,000	$532,000
Other	$512,000	--

Gender

	2014	2012
Male	$779,000	$734,000
Female	$531,000	$497,000

Compensation Transparency

	2014	2012
Open	$843,000	$810,000
Partially Open	$574,000	$515,000
Closed	$484,000	$465,000

Lockstep Type

	2014	2012
Pure lockstep	$821,000	$1,220,000
Generally lockstep	$629,000	$563,000
Not lockstep at all	$730,000	$694,000

Firm Size

	2014	2012
51–200 attorneys	$429,000	$425,000
201–500 attorneys	$558,000	$544,000
501–1,000 attorneys	$774,000	$726,000
1,000+ attorneys	$978,000	$844,000

Firm PPP

	2014	2012
$250,001—$500,000	$414,000	$431,000
$500,001—$750,000	$451,000	$432,000
$750,001—$1M	$597,000	$589,000
$1.01M—$1.5M	$816,000	$839,000
$1.51M—$2M	$1,111,000	$1,077,000
$2M+	$1,967,000	$1,820,000

Ethnicity

	2014	2012
White, not Hispanic	$734,000	$682,000
Black, not Hispanic	$574,000	$489,000
Hispanic	$479,000	$655,000
Asian Pacific, not Hispanic	$645,000	$712,000
American Indian, not Hispanic	$438,000	$860,000
Native Hawaiian or Pacific Islander, not Hispanic	$175,000	--
Mixed races	$736,000	$670,000

APPENDIX III – COMPENSATION CHANGE FOR LATERAL PARTNERS

Compenstation Change (Total)

	2014	2012
Increased 10% or more	53%	62%
Decreased 10% or more	8%	9%
Stayed about the same	39%	29%

Compenstation Increase (Total)

	2014
10%–20%	36%
21%–30%	27%
31%–40%	10%
41%–50%	7%
51%–60%	4%
61%–70%	2%
71%–80%	1%
81%–90%	1%
91%–100%	3%
100%+	9%
	2012
10% or less	19%
11%–20%	31%
21%–30%	19%
31%–40%	11%
41%–50%	4%
51%+	17%

Compenstation Decrease (Total)

	2014
10%–20%	51%
21%–30%	26%
31%–40%	9%
41%–50%	10%
51%–60%	3%
61%–70%	1%
	2012
10% or less	24%
11%–20%	37%
21%–30%	15%
31%–40%	11%
41%–50%	8%
51%+	4%

APPENDIX IV – AVERAGE TOTAL ORIGINATIONS

Partnership Tenure

	2014	2012
1–5 years	$813,000	$984,000
6–10 years	$1,792,000	$1,660,000
11–20 years	$2,353,000	$2,320,000
20+ years	$2,918,000	$2,660,000

Partnership Status

	2014	2012
Equity Partner	$2,812,000	$2,620,000
Non-equity Partner	$673,000	$712,000

Practice Area

	2014	2012
Litigation	$1,840,000	$1,710,000
Corporate	$2,714,000	$2,430,000
IP	$2,620,000	$2,130,000
Labor & Employment	$1,391,000	$1,370,000
Tax & ERISA	$1,419,000	$929,000
Real Estate	$1,507,000	$1,720,000
Other	$1,638,000	$1,962,000

City

	2014	2012
New York	$2,827,000	$2,890,000
DC / NoVA	$2,056,000	$2,320,000
Chicago	$1,770,000	$1,200,000
Los Angeles	$2,052,000	$1,400,000
San Francisco	$1,779,000	$2,170,000
Philadelphia	$2,067,000	$1,180,000
Boston	$2,103,000	$2,340,000
Atlanta	$2,230,000	$2,290,000
Dallas	$1,541,000	$2,340,000
Houston	$2,112,000	$2,150,000
Silicon Valley	$3,387,000	$3,720,000
Minneapolis	$2,170,000	--
Seattle	$1,280,000	$1,620,000
Other	$1,488,000	--

Gender

	2014	2012
Male	$2,195,000	$2,030,000
Female	$1,240,000	$1,410,000

Compensation Transparency

	2014	2012
Open	$2,336,000	$2,360,000
Partially Open	$1,332,000	$1,138,000
Closed	$1,352,000	$1,060,000

Lockstep Type

	2014	2012
Pure lockstep	$1,105,000	$3,300,000
Generally lockstep	$1,802,000	$1,560,000
Not lockstep at all	$1,986,000	$1,940,000

Firm Size

	2014	2012
51–200 attorneys	$1,104,000	$1,030,000
201–500 attorneys	$1,429,000	$1,390,000
501–1,000 attorneys	$2,085,000	$2,030,000
1,000+ attorneys	$2,918,000	$2,480,000

Firm PPP

	2014	2012
$250,001—$500,000	$1,120,000	$1,100,000
$500,001—$750,000	$1,375,000	$1,250,000
$750,001—$1M	$1,503,000	$1,580,000
$1.01M—$1.5M	$2,330,000	$2,400,000
$1.51M—$2M	$3,409,000	$3,635,000
$2M+	$5,163,000	$4,700,000

Ethnicity

	2014	2012
White, not Hispanic	$1,995,000	$1,880,000
Black, not Hispanic	$1,345,000	$1,480,000
Hispanic	$1,830,000	$1,450,000
Asian Pacific, not Hispanic	$1,852,000	$2,240,000
American Indian, not Hispanic	$1,125,000	$2,130,000
Native Hawaiian or Pacific Islander, not Hispanic	$50,000	--
Mixed races	$2,270,000	$2,240,000

APPENDIX V – AVERAGE TOTAL WORKING ATTORNEY RECEIPTS

Partnership Tenure

	2014	2012
1–5 years	$936,000	$933,000
6–10 years	$1,142,000	$1,140,000
11–20 years	$1,163,000	$1,120,000
20+ years	$1,166,000	$1,130,000

Partnership Status

	2014	2012
Equity Partner	$1,265,000	$1,230,000
Non-equity Partner	$850,000	$834,000

Practice Area

	2014	2012
Litigation	$1,027,000	$952,000
Corporate	$1,338,000	$1,260,000
IP	$1,249,000	$1,140,000
Labor & Employment	$888,000	$821,000
Tax & ERISA	$1,131,000	$968,000
Real Estate	$937,000	$1,090,000
Other	$1,026,000	$1,120,000

City

	2014	2012
New York	$1,603,000	$1,550,000
DC / NoVA	$1,208,000	$1,270,000
Chicago	$1,186,000	$1,070,000
Los Angeles	$1,157,000	$1,120,000
San Francisco	$1,185,000	$1,340,000
Philadelphia	$1,062,000	$851,000
Boston	$1,273,000	$1,380,000
Atlanta	$1,006,000	$1,130,000
Dallas	$961,000	$962,000
Houston	$1,012,000	$912,000
Silicon Valley	$1,666,000	$1,540,000
Minneapolis	$688,000	--
Seattle	$777,000	$840,000
Other	$796,000	--

Gender

	2014	2012
Male	$1,142,000	$1,120,000
Female	$948,000	$906,000

Compensation Transparency

	2014	2012
Open	$1,178,000	$1,140,000
Partially Open	$1,027,000	$1,030,000
Closed	$939,000	$960,000

Lockstep Type

	2014	2012
Pure lockstep	$1,023,000	$2,230,000
Generally lockstep	$1,153,000	$1,110,000
Not lockstep at all	$1,090,000	$1,050,000

Firm Size

	2014	2012
51–200 attorneys	$704,000	$667,000
201–500 attorneys	$946,000	$835,000
501–1,000 attorneys	$1,143,000	$1,100,000
1,000+ attorneys	$1,431,000	$1,430,000

Firm PPP

	2014	2012
$250,001—$500,000	$651,000	$662,000
$500,001—$750,000	$790,000	$765,000
$750,001—$1M	$1,005,000	$997,000
$1.01M—$1.5M	$1,279,000	$1,325,000
$1.51M—$2M	$1,660,000	$1,735,000
$2M+	$2,438,000	$2,220,000

Ethnicity

	2014	2012
White, not Hispanic	$1,104,000	$1,060,000
Black, not Hispanic	$1,023,000	$1,110,000
Hispanic	$1,069,000	$963,000
Asian Pacific, not Hispanic	$1,152,000	$1,290,000
American Indian, not Hispanic	$800,000	$1,390,000
Native Hawaiian or Pacific Islander, not Hispanic	$550,000	--
Mixed races	$904,000	$1,240,000

APPENDIX VI – AVERAGE BILLING RATES

Partnership Tenure

	2014	2012
1–5 years	$531	$510
6–10 years	$595	$582
11–20 years	$646	$602
20+ years	$668	$650

Partnership Status

	2014	2012
Equity Partner	$667	$632
Non-equity Partner	$519	$506

Practice Area

	2014	2012
Litigation	$551	$537
Corporate	$694	$671
IP	$662	$601
Labor & Employment	$505	$473
Tax & ERISA	$680	$629
Real Estate	$593	$565
Other	$603	$596

City

	2014	2012
New York	$772	$760
DC / NoVA	$705	$662
Chicago	$628	$586
Los Angeles	$643	$584
San Francisco	$633	$622
Philadelphia	$581	$511
Boston	$685	$687
Atlanta	$546	$560
Dallas	$614	$602
Houston	$632	$607
Silicon Valley	$803	$732
Minneapolis	$471	--
Seattle	$482	$490
Other	$474	--

Gender

	2014	2012
Male	$624	$598
Female	$561	$533

Compensation Transparency

	2014	2012
Open	$636	$610
Partially Open	$590	$563
Closed	$549	$536

Lockstep Type

	2014	2012
Pure lockstep	$646	$814
Generally lockstep	$579	$555
Not lockstep at all	$612	$585

Firm Size

	2014	2012
51–200 attorneys	$455	$442
201–500 attorneys	$538	$495
501–1,000 attorneys	$630	$604
1,000+ attorneys	$740	$695

Firm PPP

	2014	2012
$250,001—$500,000	$438	$432
$500,001—$750,000	$481	$464
$750,001—$1M	$598	$590
$1.01M—$1.5M	$722	$680
$1.51M—$2M	$792	$768
$2M+	$909	$883

Ethnicity

	2014	2012
White, not Hispanic	$611	$580
Black, not Hispanic	$560	$531
Hispanic	$559	$563
Asian Pacific, not Hispanic	$612	$651
American Indian, not Hispanic	$663	$778
Native Hawaiian or Pacific Islander, not Hispanic	$288	--
Mixed races	$613	$650

APPENDIX VII – AVERAGE BILLABLE HOURS

Partnership Tenure

	2014	2012
1–5 years	1,795	1,774
6–10 years	1,716	1,759
11–20 years	1,683	1,652
20+ years	1,524	1,555

Partnership Status

	2014	2012
Equity Partner	1,681	1,701
Non-equity Partner	1,692	1,663

Practice Area

	2014	2012
Litigation	1,785	1,792
Corporate	1,601	1,518
IP	1,774	1,769
Labor & Employment	1,694	1,660
Tax & ERISA	1,691	1,649
Real Estate	1,600	1,593
Other	1,612	1,691

City

	2014	2012
New York	1,719	1,696
DC / NoVA	1,658	1,743
Chicago	1,688	1,723
Los Angeles	1,783	1,801
San Francisco	1,731	1,796
Philadelphia	1,615	1,664
Boston	1,653	1,781
Atlanta	1,767	1,777
Dallas	1,650	1,709
Houston	1,628	1,662
Silicon Valley	1,826	1,718
Minneapolis	1,554	--
Seattle	1,705	1,687
Other	1,661	--

Gender

	2014	2012
Male	1,702	1,690
Female	1,634	1,670

Compensation Transparency

	2014	2012
Open	1,672	1,677
Partially Open	1,696	1,677
Closed	1,717	1,722

Lockstep Type

	2014	2012
Pure lockstep	1,775	1,672
Generally lockstep	1,821	1,756
Not lockstep at all	1,664	1,674

Firm Size

	2014	2012
51–200 attorneys	1,563	1,578
201–500 attorneys	1,642	1,656
501–1,000 attorneys	1,709	1,699
1,000+ attorneys	1,762	1,736

Firm PPP

	2014	2012
$250,001—$500,000	1,638	1,651
$500,001—$750,000	1,656	1,653
$750,001—$1M	1,628	1,602
$1.01M—$1.5M	1,696	1,750
$1.51M—$2M	1,806	1,645
$2M+	2,052	2,043

Ethnicity

	2014	2012
White, not Hispanic	1,688	1,689
Black, not Hispanic	1,671	1,578
Hispanic	1,652	1,720
Asian Pacific, not Hispanic	1,702	1,605
American Indian, not Hispanic	1,694	1,320
Native Hawaiian or Pacific Islander, not Hispanic	2,025	--
Mixed races	1,611	1,616

APPENDIX VIII – AVERAGE NON-BILLABLE HOURS

Partnership Tenure

	2014	2012
1–5 years	443	455
6–10 years	507	531
11–20 years	552	556
20+ years	614	587

Partnership Status

	2014	2012
Equity Partner	569	570
Non-equity Partner	464	467

Practice Area

	2014	2012
Litigation	451	459
Corporate	603	615
IP	503	542
Labor & Employment	508	489
Tax & ERISA	555	511
Real Estate	499	511
Other	567	552

City

	2014	2012
New York	532	512
DC / NoVA	575	599
Chicago	447	432
Los Angeles	460	475
San Francisco	514	511
Philadelphia	580	495
Boston	570	490
Atlanta	578	600
Dallas	494	511
Houston	533	545
Silicon Valley	581	606
Minneapolis	469	--
Seattle	534	513
Other	531	--

Gender

	2014	2012
Male	531	541
Female	512	490

Compensation Transparency

	2014	2012
Open	560	571
Partially Open	503	530
Closed	453	435

Lockstep Type

	2014	2012
Pure lockstep	473	589
Generally lockstep	460	512
Not lockstep at all	536	534

Firm Size

	2014	2012
51–200 attorneys	517	461
201–500 attorneys	522	507
501–1,000 attorneys	531	552
1,000+ attorneys	529	542

Firm PPP

	2014	2012
$250,001—$500,000	527	501
$500,001—$750,000	511	516
$750,001—$1M	516	576
$1.01M—$1.5M	541	528
$1.51M—$2M	580	599
$2M+	472	489

Ethnicity

	2014	2012
White, not Hispanic	525	525
Black, not Hispanic	559	551
Hispanic	497	497
Asian Pacific, not Hispanic	538	634
American Indian, not Hispanic	456	865
Native Hawaiian or Pacific Islander, not Hispanic	175	--
Mixed races	583	542

APPENDIX IX – SATISFACTION WITH TOTAL COMPENSATION

Compensation Satisfaction

	2014	2012
Very satisfied	27%	27%
Somewhat satisfied	53%	51%
Not very satisfied	15%	15%
Not at all satisfied	5%	7%
Not Sure	0%	1%

Partnership Tenure

	2014				2012			
	1–5 yrs	6–10 yrs	11–20 yrs	20+ yrs	1–5 yrs	6–10 yrs	11–20 yrs	20+ yrs
Very satisfied	19%	23%	29%	37%	18%	25%	31%	33%
Somewhat satisfied	57%	55%	53%	45%	55%	52%	50%	47%
Not very satisfied	17%	16%	14%	14%	19%	15%	14%	7%
Not at all satisfied	7%	6%	4%	4%	6%	7%	5%	12%
Not Sure	0%	0%	0%	0%	1%	0%	1%	1%

Partnership Status

	2014		2012	
	Equity Partner	Non-Equity Partner	Equity Partner	Non-Equity Partner
Very satisfied	37%	12%	36%	12%
Somewhat satisfied	50%	57%	50%	54%
Not very satisfied	10%	23%	11%	22%
Not at all satisfied	3%	8%	4%	11%
Not Sure	0%	0%	0%	1%

Practice Area

	Litigation		Corporate		IP		Labor/Emp		Tax/ERISA		Real Estate		Other	
	2014	2012	2014	2012	2014	2012	2014	2012	2014	2012	2014	2012	2014	2012
Very satisfied	25%	22%	27%	28%	34%	28%	28%	23%	33%	31%	28%	20%	24%	31%
Somewhat satisfied	53%	53%	50%	50%	50%	49%	52%	60%	55%	49%	49%	56%	56%	49%
Not very satisfied	17%	18%	17%	16%	12%	13%	15%	13%	10%	14%	20%	15%	14%	14%
Not at all satisfied	5%	6%	5%	6%	4%	9%	4%	4%	3%	5%	3%	8%	6%	6%
Not Sure	0%	1%	1%	0%	0%	2%	0%	0%	0%	1%	0%	1%	0%	1%

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City

	New York		DC / NoVA		Chicago		Los Angeles		San Francisco		Philadelphia		Boston	
	2014	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**
Very satisfied	27%	32%	30%	28%	27%	22%	24%	22%	33%	33%	33%	16%	23%	19%
Somewhat satisfied	54%	41%	49%	50%	50%	56%	51%	49%	44%	41%	47%	53%	58%	55%
Not very satisfied	15%	17%	16%	16%	19%	14%	19%	22%	14%	19%	18%	25%	15%	13%
Not at all satisfied	5%	8%	5%	6%	5%	8%	5%	6%	8%	8%	2%	3%	4%	13%
Not Sure	0%	1%	0%	0%	0%	0%	1%	2%	1%	0%	0%	4%	1%	0%
	Atlanta		Dallas		Houston		Silicon Valley		Minneapolis		Seattle		Other	
	2014	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**
Very satisfied	28%	31%	27%	34%	24%	32%	36%	33%	24%	--	18%	38%	25%	--
Somewhat satisfied	50%	55%	58%	57%	55%	59%	48%	44%	53%	--	63%	47%	56%	--
Not very satisfied	16%	7%	11%	9%	14%	4%	7%	14%	13%	--	16%	15%	14%	--
Not at all satisfied	5%	8%	5%	0%	5%	4%	9%	8%	9%	--	3%	0%	5%	--
Not Sure	0%	0%	0%	0%	2%	2%	0%	2%	0%	--	0%	0%	0%	--

Lateral Status

	Joined Laterally		Home Grown	
	2014	**2012**	**2014**	**2012**
Very satisfied	32%	30%	23%	24%
Somewhat satisfied	51%	49%	54%	53%
Not very satisfied	12%	14%	18%	16%
Not at all satisfied	4%	7%	6%	6%
Not Sure	0%	1%	0%	1%

Move-related Compensation Change

	Increased 10% or more		Decreased 10% or more		Stayed about the same*	
	2014	**2012**	**2014**	**2012**	**2014**	**2012**
Very satisfied	37%	35%	15%	10%	28%	25%
Somewhat satisfied	51%	48%	41%	43%	53%	53%
Not very satisfied	9%	11%	28%	20%	14%	17%
Not at all satisfied	3%	5%	15%	28%	4%	6%
Not Sure	0%	1%	0%	0%	1%	1%

*Increased or decreased by less than 10%)

Compensation System

	Open		Partially Open		Closed	
	2014	**2012**	**2014**	**2012**	**2014**	**2012**
Very satisfied	32%	34%	20%	21%	18%	13%
Somewhat satisfied	52%	49%	56%	55%	53%	53%
Not very satisfied	12%	12%	19%	17%	23%	22%
Not at all satisfied	4%	5%	6%	6%	7%	11%
Not Sure	0%	0%	0%	1%	0%	1%

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Lockstep Type

	Pure Lockstep		Generally Lockstep		Not Lockstep At All	
	2014	**2012**	**2014**	**2012**	**2014**	**2012**
Very satisfied	29%	55%	26%	26%	27%	26%
Somewhat satisfied	29%	24%	56%	54%	52%	51%
Not very satisfied	21%	12%	14%	14%	15%	15%
Not at all satisfied	21%	9%	5%	6%	5%	7%
Not Sure	0%	0%	0%	0%	0%	1%

Law Firm Size

	51–200 attorneys		201–500 attorneys		501–1,000 attorneys		1,000+ attorneys	
	2014	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**
Very satisfied	21%	27%	25%	27%	29%	28%	29%	25%
Somewhat satisfied	55%	49%	56%	51%	52%	51%	48%	52%
Not very satisfied	19%	18%	14%	15%	14%	15%	18%	14%
Not at all satisfied	5%	7%	5%	6%	5%	5%	6%	8%
Not Sure	0%	1%	0%	1%	0%	1%	0%	1%

Firm PPP

	$250,001—$500,000		$500,001—$750,000		$750,001—$1M		$1.01M—$1.5M		$1.51M—$2M		$2M+	
	2014	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**
Very satisfied	28%	22%	22%	19%	24%	25%	26%	30%	34%	35%	50%	51%
Somewhat satisfied	53%	57%	56%	52%	56%	54%	50%	52%	51%	45%	39%	40%
Not very satisfied	16%	16%	16%	21%	16%	14%	16%	12%	13%	11%	9%	6%
Not at all satisfied	3%	6%	6%	7%	4%	7%	7%	6%	2%	9%	3%	2%
Not Sure	0%	0%	0%	1%	0%	0%	1%	1%	1%	2%	0%	0%

Gender

	Male		Female	
	2014	**2012**	**2014**	**2012**
Very satisfied	28%	28%	23%	22%
Somewhat satisfied	53%	52%	52%	50%
Not very satisfied	14%	14%	20%	18%
Not at all satisfied	5%	6%	5%	9%
Not Sure	0%	1%	0%	1%

Perceived Bias

	2014	**2012**
Racial bias	2%	1%
Sexual orientation bias	1%	2%
Bias against laterals	2%	2%
Gender bias	12%	11%
Cronyism	30%	35%
Other reason	17%	21%
Not sure	36%	29%

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Ethnicity

	White, not Hispanic		Black, not Hispanic		Hispanic		Asian Pacific, not Hispanic		American Indian, not Hispanic		Native Hawaiian or Pacific Islander, not Hispanic		Mixed races	
	2014	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**
Very satisfied	28%	27%	14%	24%	24%	27%	24%	19%	25%	0%	100%	--	25%	15%
Somewhat satisfied	53%	51%	43%	52%	44%	59%	43%	57%	0%	60%	--	--	58%	40%
Not very satisfied	15%	15%	27%	6%	20%	9%	22%	15%	25%	0%	--	--	17%	25%
Not at all satisfied	4%	6%	16%	18%	12%	6%	10%	8%	50%	40%	--	--	0%	15%
Not Sure	0%	1%	0%	0%	0%	0%	1%	1%	0%	0%	--	--	0%	5%

Total Compensation

	< $300K		$301K–$500K		$501K–$1M		$1.01M–$1.5M		$1.51M+	
	2014	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**
Very satisfied	9%	10%	16%	16%	33%	30%	47%	54%	63%	65%
Somewhat satisfied	55%	50%	59%	59%	52%	55%	48%	40%	33%	31%
Not very satisfied	26%	26%	19%	17%	11%	11%	4%	5%	3%	4%
Not at all satisfied	10%	13%	6%	8%	4%	3%	1%	1%	0%	0%
Not Sure	0%	1%	0%	1%	0%	0%	0%	0%	1%	0%

Total Originations

	< $1M		$1.01M–$2M		$2.01M–$3M		$3.01M–5M		$5.01M+	
	2014	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**
Very satisfied	16%	17%	29%	28%	36%	32%	40%	49%	50%	51%
Somewhat satisfied	56%	54%	51%	52%	50%	50%	49%	45%	41%	41%
Not very satisfied	21%	19%	15%	15%	10%	11%	8%	7%	6%	6%
Not at all satisfied	7%	9%	5%	5%	4%	6%	2%	0%	2%	1%
Not Sure	0%	1%	0%	0%	0%	1%	0%	0%	1%	0%

Billable Hours

	< 1,500		1501–1800		1801–2100		2101–2400		2401+	
	2014	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**	**2014**	**2012**
Very satisfied	25%	23%	27%	26%	25%	29%	31%	29%	45%	34%
Somewhat satisfied	52%	49%	52%	52%	54%	52%	53%	56%	47%	51%
Not very satisfied	17%	18%	16%	15%	15%	15%	12%	11%	8%	11%
Not at all satisfied	6%	10%	5%	7%	6%	4%	4%	3%	0%	4%
Not Sure	0%	1%	0%	1%	0%	1%	0%	1%	0%	0%

APPENDIX X – DESIRED COMPENSATION

Should your compensation be higher than it is?

	2014	2012
No, I feel my compensation is about right	45%	43%
Yes, I should be earning more	55%	58%

How much higher should your compensation be?

	2014	2012
10% or less	10%	10%
11%-20%	46%	47%
21%-30%	29%	27%
31%-40%	7%	7%
41%-50%	4%	4%
51%-60%	2%	3%
61%-70%	0%	1%
71%-80%	0%	0%
81%- 90%	0%	0%
91%-100%	1%	1%
100% or more	1%	--

APPENDIX XI – IMPORTANCE OF FACTORS IN DETERMINING COMPENSATION / DESIRE FOR CHANGES

Importance of Factors

2014	Originations	Receipts	Realization	Billable Hours	Non-Billable Hours	Mgmt Respons.	Cross Selling	Citizenship	Seniority
Very Important	74%	59%	25%	39%	2%	9%	12%	11%	5%
Somewhat Important	22%	35%	59%	52%	28%	55%	45%	43%	33%
Not Very Important	3%	5%	14%	9%	50%	32%	34%	35%	43%
Not Important at All	1%	1%	1%	1%	20%	5%	8%	12%	19%
2012	Originations	Receipts	Realization	Billable Hours	Non-Billable Hours	Mgmt Respons.	Cross Selling	Citizenship	Seniority
Very Important	74%	59%	26%	40%	1%	9%	12%	10%	6%
Somewhat Important	22%	34%	58%	50%	28%	54%	46%	42%	31%
Not Very Important	3%	6%	14%	9%	49%	32%	33%	34%	43%
Not Important at All	1%	1%	2%	2%	21%	5%	9%	14%	20%

Perceived Importance of Factors

2014	Originations	Receipts	Realization	Billable Hours	Non-Billable Hours	Mgmt Respons.	Cross Selling	Citizenship	Seniority
Is Most Important	66%	21%	1%	6%	0%	1%	2%	1%	2%
Should Be Most Imp.	56%	26%	3%	4%	0%	1%	5%	4%	1%
2012	Originations	Receipts	Realization	Billable Hours	Non-Billable Hours	Mgmt Respons.	Cross Selling	Citizenship	Seniority
Is Most Important	65%	21%	1%	8%	0%	2%	1%	1%	1%
Should Be Most Imp.	58%	25%	2%	4%	0%	1%	5%	3%	1%

Change in Importance

	2014	2012
Yes, has been a change	40%	44%
No, has not been a change	40%	37%
Not certain	21%	19%

Compensation System Changes

	2014	2012
Yes, would like to see changes	65%	67%
No, no need for changes	19%	20%
Not sure	16%	14%

Factor has become…

2014	Originations	Receipts	Realization	Billable Hours	Non-Billable Hours	Mgmt Respons.	Cross Selling	Citizenship	Seniority
More important	55%	32%	28%	29%	2%	12%	23%	7%	1%
Less important	6%	10%	8%	12%	35%	20%	13%	44%	50%
2012	Originations	Receipts	Realization	Billable Hours	Non-Billable Hours	Mgmt Respons.	Cross Selling	Citizenship	Seniority
More important	55%	32%	27%	31%	2%	14%	21%	7%	1%
Less important	7%	11%	8%	11%	36%	19%	15%	45%	52%

QUESTIONNAIRE

2014 PARTNER COMPENSATION SURVEY

Thank you for agreeing to participate in this survey. Your responses will be kept strictly confidential by ALM Legal Intelligence and no identifying information will be associated with your answers or forwarded to Major, Lindsey & Africa or any other party.

1. **How many years have you been a partner at your current law firm?**
   - 1 to 5 years
   - 6 to 10 years
   - 11 to 20 years
   - More than 20 years

2. **How many years have you been a partner at a law firm in total? Please include any and all law firms including your current one.**
   - 1 to 5 years
   - 6 to 10 years
   - 11 to 20 years
   - More than 20 years

3. **What was your Partnership Status during the 2013 compensation year?**

   For your response, please use The American Lawyer definitions of Partnership Status, which defines Equity Partners as those who receive no more than half their compensation on a fixed-income basis and Non-Equity Partners as those who receive more than half their compensation on a fixed basis.

   - Equity Partner
   - Non-equity Partner

4. **What is your primary practice area?**

Administrative/Regulatory
Antitrust
Banking
Bankruptcy
Corporate - General
Corporate - Finance/Securities
Corporate - M&A
Employment/Labor
Energy
Entertainment
Environmental
ERISA/Benefits
Government Contracts
Healthcare
Immigration
Insurance
International
IP - Litigation
IP – Transactional
Litigation - General
Litigation - Appellate
Litigation - White Collar/ Securities Enforcement
Project Finance
Real Estate
Tax
Trusts & Estates
Other

5. **In what city do you practice?**

Drop down menu of cities and states, as listed below

Akron, OH
Albuquerque, NM
Arlington, TX
Atlanta, GA
Austin, TX
Baltimore, MD
Birmingham, AL
Boston, MA
Buffalo, NY
Charlotte, NC
Chicago, IL
Cincinnati, OH
Cleveland, OH
Colorado Springs, CO
Columbia, SC
Columbus, OH
Dallas, TX
Denver, CO
Detroit, MI
El Paso, TX
Fort Worth, TX
Fresno, CA
Greenville, SC
Hartford, CT
Honolulu, HI
Houston, TX
Indianapolis, IN
Irvine, CA
Jacksonville, FL
Kansas City, MO
Las Vegas, NV
Long Beach, CA
Los Angeles, CA
Louisville, KY
Memphis, TN
Mesa, AZ
Miami, FL
Milwaukee, WI
Minneapolis, MN
Mountain View, CA
Nashville, TN
New Orleans, LA
New York, NY
Newark, NJ/Northern NJ
Oakland, CA
Oklahoma City, OK
Omaha, NE
Orange County, CA
Orlando, FL
Palo Alto/Silicon Valley, CA
Philadelphia, PA
Phoenix, AZ
Pittsburgh, PA
Portland, OR
Providence, RI
Raleigh, NC
Richmond, VA
Sacramento, CA
San Antonio, TX
San Diego, CA
San Francisco, CA
San Jose, CA
Seattle, WA
St. Louis, MO
Tallahassee, FL
Tampa, FL
Tucson, AZ
Tulsa, OK
Virginia Beach/Tidewater, VA
Washington, D.C./NoVA
Westchester, NY
Winston-Salem, NC
Other

6. **Did you join your present firm laterally as a partner, or were you previously an associate or counsel with your present firm before making partner?**

- I joined my present firm laterally as a partner
- I was previously an associate or counsel with my present firm before making partner

[IF RESPONDENT DID NOT JOIN PRESENT FIRM LATERALLY AS A PARTNER, SKIP TO Q.10]

7. **When you joined your present firm laterally as a partner, did your total compensation increase, decrease or stay about the same as in your previous position?**

By total compensation we mean all base and bonus compensation earned by you in respect of a fiscal year, even if it was paid in the following fiscal year.

- Compensation increased 10% or more
- Compensation decreased 10% or more
- Compensation stayed about the same (increased or decreased by less than 10%)

8. [IF COMPENSATION INCREASED – FROM Q.7] **By about what percent did your total compensation increase?**

   - *Drop down menu of percentages ranging from "10%–20%" to "More than 100%," in 10% increments.*

9. [IF COMPENSATION DECREASED – FROM Q.7] **By about what percent did your total compensation decrease?**

   - *Drop down menu of percentages ranging from "10%–20%" to "100%," in 10% increments.*

10. **Is your firm's compensation system an open or closed one, i.e., do you know what other partners make?**

    - Open: I know what everyone makes, or can easily find out
    - Partially Open: I know ranges of compensation, but do not know exactly who makes what
    - Closed: I don't know what anyone else makes

11. **What was your <u>total compensation</u> for 2013?**

    For purposes of this question, total compensation means all base and bonus compensation received by you in respect of your 2013 fiscal year, even if a portion of it was paid in your 2014 fiscal year. [Please exclude one-time contingency case payments or other unusual payments that are unlikely to re-occur.]

    - *Drop down menu of compensation values ranging from "Less than $100,000" to "more than $8,000,000," in $50,000 increments.*

12. **What were your <u>total originations</u> for 2013?**

    By total originations we mean the total dollar value of work performed and collected by you and the other attorneys at your firm for which your efforts were the proximate cause of such work coming to the firm.

    - *Drop down menu of origination values ranging from "Less than $100,000" to "more than $30,000,000," in $100,000 increments through $10 million and $1 million increments between $10 million and $30 million.*
    - *My firm does not track originations, but my best guess would be [SAME DROPS]*
    - *My firm does not track originations at all and I have no idea what the number would be*

13. **What were your <u>total working attorney receipts</u> for 2013?**

    By total working attorney receipts we mean the number of dollars collected (or expected to be collected) by your firm for work performed personally by you in a fiscal year, even if it was collected in the following fiscal year. [Please exclude one-time contingency case payments or other unusual payments that are unlikely to re-occur.]

    - *Drop down menu of working attorney receipts values ranging from "Less than $100,000" to "more than $5,000,000," in $100,000 increments.*

14. **What was your <u>standard hourly billing rate</u> for 2013?**

    - *Drop down menu of standard hourly billing rate values ranging from "$0-50" to "more than $2,000," in $25/hour increments.*

15. What were your total billable hours for 2013?

- *Drop down menu of billable hours values ranging from "1,000 or less" to "more than 3,000," in 50-hour increments.*

16. What were your total non-billable hours for 2013?

This would include management, recruiting, business development, CLE, etc.

- *Drop down menu of non-billable hours values ranging from "0-50" to "more than 1,000," in 50-hour increments.*

17. Is your firm's compensation system pure lockstep, generally lockstep but it allows for some variance based on certain factors, or not lockstep at all?

As you may know, lockstep means that compensation is based on seniority and not on ability, experience or work product.

- My firm is pure lockstep
- My firm is generally lockstep, but allows for some variance
- My firm is not lockstep at all

[IF RESPONDENTS' FIRM IS PURE LOCKSTEP SKIP TO Q.24]

18. For each factor below please tell us how important it is to your firm when determining compensation.

- *Drop down menu of importance listing "Very Important", "Somewhat Important", "Not Very Important" and "Not At All Important".*

Originations
Working attorney receipts
Realization rate
Billable hours
Non-billable hours
Management responsibilities
Cross-selling
Good citizenship
Seniority

19. Which one of these factors do you feel is the most important?

Originations
Working attorney receipts
Realization rate
Billable hours
Non-billable hours
Management responsibilities
Cross-selling
Good citizenship
Seniority

20. And which one do you feel <u>should be</u> the most important?

Originations
Working attorney receipts
Realization rate
Billable hours
Non-billable hours
Management responsibilities
Cross-selling
Good citizenship
Seniority

21. Do you feel that over the past few years there has been any change in the importance of these factors for determining compensation?

- Yes, has been a change
- No, has not been a change
- Not certain

22. Which factors, if any, do you feel have become <u>more important</u>? (Please select as many as apply)

Originations
Working attorney receipts
Realization rate
Billable hours
Non-billable hours
Management responsibilities
Cross-selling
Good citizenship
Seniority

23. And which factors, if any, do you feel have become <u>less important</u>? (Please select as many as apply)

Originations
Working attorney receipts
Realization rate
Billable hours
Non-billable hours
Management responsibilities
Cross-selling
Good citizenship
Seniority

24. Generally, how satisfied are you with your total compensation?

- I am very satisfied
- I am somewhat satisfied
- I am not very satisfied
- I am not at all satisfied
- Can't say

25. [ASK Q.25 ONLY IF NOT VERY OR NOT AT ALL SATISFIED] **If you are not satisfied with your compensation, do you feel it is because of any bias on the part of your firm such as any of the following:**

- Racial bias
- Sexual orientation bias
- Bias against laterals
- Gender bias
- Cronyism
- Cannot say

26. Do you feel your total compensation should be higher than it is?

- Yes, I feel it should be higher
- No, I feel it is about right

27. Roughly how much higher do you feel your compensation should be?

- *Drop down menu of percentages ranging from "10% or Less" to "100% or more," in 10% increments*

28. Are there any things about your compensation system that you would like to see changed?

- Yes, would like to see some things changed
- No, no need for changes
- Can't say

[IF "YES, WOULD LIKE TO SEE SOME THINGS CHANGED", ASK Q.29].

29. What would you like to see changed?

- *Write-in responses allowed at this point*

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Finally, just a few background questions.

30. How large is your law firm?

- 1-50 attorneys
- 51-200 attorneys
- 201-500 attorneys
- 501-1,000 attorneys
- 1,000+ attorneys

31. What is your gender?

- Male
- Female

32. Which of these categories, used by the American Bar Association, best describes your ethnicity?

- White, not Hispanic
- Black, not Hispanic
- Hispanic
- Asian Pacific, not Hispanic
- American Indian, not Hispanic
- Native Hawaiian or Pacific Islander, not Hispanic
- Mixed races

Thank you for participating in the Major, Lindsey & Africa Partner Compensation Survey.

For Managing Partners and members of firm management who want a more detailed briefing on the results of this survey, please contact Jeffrey Lowe, Global Practice Leader, Law Firm Practice and Managing Partner, Washington D.C. at Jlowe@mlaglobal.com or 202-628-0661.

To learn more about Major, Lindsey & Africa, visit www.mlaglobal.com.

SUBMISSION TO THE

2015 Commission on Legislative, Judicial and Executive Compensation

APPENDIX L

2016 Salary Guide for the Legal Field, Robert Half

2016 SALARY GUIDE

FOR THE LEGAL FIELD

Robert Half® Legal

Table of Contents

From the Chairman

Dear colleague:

The hiring market is becoming ever more competitive. To recruit and keep the best talent, employers say they are more willing to negotiate compensation than they were just a year ago, our research shows. But it's often difficult to know whether an offer is the right one.

That's why it's critical to benchmark your compensation levels periodically to ensure that what you are paying is in line with what other organizations are offering in your area. For many years, Robert Half Legal has published an annual *Salary Guide* to help employers remain competitive in their industry and region. In preparing the guide each year, we tap our deep networks to identify the latest hiring and workplace trends.

I am pleased to present the *2016 Salary Guide*, which features a forecast of compensation ranges for positions across the legal field. I hope you will find it helpful as you grow your organization in 2016.

For more about compensation and staffing, please visit our Salary Center at **roberthalflegal.com/salary-center**.

Sincerely,

Max Messmer
Chairman and CEO

Understanding the *Salary Guide*

For decades, the *Robert Half Legal Salary Guide* has been a highly regarded resource for employers — and for good reason. Competitive compensation is a company's best line of defense against losing top talent.

The *2016 Salary Guide* features salary ranges for more than 100 positions in the legal field. Each year, employers use the guide to set compensation levels for new hires, plan budgets and better understand the hiring environment. The *Salary Guide* is so highly regarded that the U.S. Department of Labor's Bureau of Labor Statistics has included the guide's data in its *Occupational Outlook Handbook*.

The salary figures in the 2016 edition are based on a number of sources, most notably the thousands of full-time, temporary and project placements our staffing and recruiting professionals make each year. Our experts interact with hiring managers and job seekers daily, giving us unique, real-world insight into the latest compensation trends.

OTHER SOURCES INCLUDE:

- Our surveys of executives and hiring managers throughout North America
- An in-depth analysis of the hiring environment and an extrapolation of current trends into 2016
- Local insights from our staffing and recruiting teams throughout our global branch network

The projected salaries for each position reflect starting pay only. Bonuses, incentives and other forms of compensation are not taken into account. Since professionals joining a company may enter at a variety of experience levels, we report salaries in ranges. The ranges represent national averages and can be adjusted for your market by using the local variance numbers on Pages 16-18 for the United States and Page 27 for Canada.

Visit our Salary Center at **roberthalflegal.com/salary-center** for more information and resources.

Hiring and Management Trends – United States

Hiring in the legal field is gathering momentum as law firms and corporate legal departments strategically build their legal teams to manage rising workloads and plan for future growth.

Law firms of all sizes are responding to higher demand for legal services stemming from a sharp rise in business transactions such as mergers and acquisitions and compliance activity. At the same time, succession planning has become a top priority as law firms seek to replace lawyers preparing for retirement. Client pressure on law firms to deliver cost-efficient legal services is keeping demand high for skilled paralegals.

Corporate legal departments are expanding their teams to bring more work in-house and reduce spending on outside counsel. They favor candidates who can handle a wide range of business-related legal matters, including expansion into new products and markets, executive compensation, and labor and employment disputes. Contract managers, contract administrators and corporate paralegals are seeing more opportunities.

Candidates with backgrounds in the hottest practice areas are in short supply, which is intensifying competition and driving up salaries. Highly sought-after legal professionals are receiving multiple job offers, counteroffers and, in some cases, signing bonuses. To entice job seekers, employers are enhancing salaries and benefits. They are emphasizing greater work flexibility, training, career advancement opportunities and prized perks, such as a business-casual work environment and the option to telecommute. In addition to interesting work and job stability, many applicants seek generous employer-sponsored 401(k) programs, substantial healthcare coverage, and transportation or parking subsidies. Employers who delay hiring decisions, or are reluctant to offer competitive compensation and benefits, risk losing strong candidates to other firms.

64%
of lawyers said it is challenging for their law firms or companies to find skilled legal professionals today.

Source: Robert Half Legal survey of 200 lawyers among the largest law firms and corporations in the United States

To gain staffing flexibility and access hard-to-find talent for special initiatives, law firms and corporate legal departments also continue to engage lawyers, paralegals and support staff on a project or consulting basis. This approach offers employers a cost-effective option to manage particular undertakings, such as large-scale document review and eDiscovery initiatives.

Lawyers were asked, **"Aside from compensation or bonus, which of the following provides the best incentive for legal professionals to remain with a law firm/ company?"** Their responses:*

**Only the top responses are shown.*
Source: Robert Half Legal survey of 200 lawyers among the largest law firms and corporations in the United States

SKILLS AND EXPERTISE IN DEMAND

Lawyers

As law firms of all sizes expand practice groups to pursue new business opportunities, they are hiring midlevel lawyers who can assume full caseloads and junior-level associates who can help meet client demands for lower billing rates. While recruiting has not returned to prerecession levels, law firms in many markets are expanding first-year and summer associate programs.

Corporate legal departments are hiring lawyers with niche or industry-specific backgrounds. Like law firms, legal departments expect job applicants to have solid educational credentials, stable work histories and outstanding interpersonal abilities. Business acumen, technological proficiency and writing skills also are invaluable.

As important as attracting and retaining highly skilled legal professionals is today, it will become even more essential as demographic shifts occur. Research released by the American Bar Association (ABA) points to a continuing decline in the number of law school graduates that will create a narrower pipeline of new lawyers.[1] At the other end of the spectrum, the exodus of baby boomers from the workforce will

leave a dearth of professionals in leadership roles and partner ranks. With this talent squeeze in mind, legal employers may want to consider how they can become even more attractive to Gen Y professionals and the generation now entering the workforce, Gen Z. According to research conducted by Robert Half Legal for its annual Future Law Office project, meeting the expectations of these professionals may entail offering more flexible work options, greater access to cutting-edge technologies, and a corporate culture that promotes collaboration and work-life balance. (To learn more, visit **futurelawoffice.com**.)

[1]*American Bar Association, "ABA Section of Legal Education reports 2014 law school enrollment data," December 16, 2014.*

Paralegals and Legal Support Professionals

The strengthening legal job market has renewed demand for paralegals and legal secretaries. Employers often seek paralegals with a bachelor's degree and a certificate of completion from an ABA-approved paralegal education program. In some markets, however, law firms also are hiring entry-level legal assistants who possess a paralegal certificate but may lack a four-year degree. Hybrid or blended paralegal/legal secretary roles are becoming more common as organizations streamline legal support functions to improve efficiencies.

Versatile paralegals who can assume a wider range of responsibilities also are sought by law firms to perform multiple job functions and deliver quality results at lower billing rates for clients. Companies are seeking paralegals with compliance, contract and lease administration, and eDiscovery experience to support corporate transactions and litigation matters.

The most in-demand professionals have several years of experience combined with strong technology skills. Law firms desire candidates who have backgrounds in hot practice areas such as intellectual property, compliance, commercial real estate, and litigation or eDiscovery. In some markets, bilingual abilities — especially Spanish language skills — are increasingly vital.

71%

of lawyers said blended or hybrid paralegal/legal secretary positions are more common today than they were two years ago.

Source: Robert Half Legal survey of 200 lawyers among the largest law firms and corporations in the United States

Ideal legal support candidates possess a stable employment history and are able to perform multiple job functions. Strong interpersonal skills are essential for both paralegals and legal secretaries, and because so much client contact occurs through email, writing skills also are critical. Other desired traits are flexibility, resourcefulness and initiative. In terms of technical skills, proficiency with Microsoft Office is expected, as is expertise with document management software and other applications specific to a particular practice area or law firm.

GEN Z: THE NEXT GENERATION OF WORKERS IS HERE!

Generation Z, often defined as individuals born between 1990 and 1999, brings a new perspective on work and life to the office. What does that mean for hiring managers who recruit from this demographic group? Following are some findings of our research about Gen Z's attitudes and preferences:

- Gen Z has access to more mobile and personal tech devices than any previous generation, which to some would indicate a preference for working solo. Yet nearly two-thirds of those surveyed said their ideal work situation includes collaborating with a small group in an office.
- Gen Z's career goals include attaining a management position within five years of finishing college (32 percent), as well as starting their own business (20 percent).
- Most survey participants also reported at least some parental influence in career decisions.
- Gen Z respondents said they value financial and workplace security. Most said they prefer to work at midsize companies or large international corporations for the security and advancement opportunities.
- Most of those surveyed (77 percent) believe they'll need to work harder than previous generations to have a satisfying career.

To download our report, *Get Ready for Generation Z*, visit **roberthalf.com/generation-z**.

IN-DEMAND PRACTICE AREAS AND POSITIONS

Litigation — Litigation expertise is always in demand, although the nature and amount of activity tend to fluctuate with the economic environment. Among those seeing increased opportunities are lawyers and paralegals with backgrounds in insurance defense, personal injury, medical malpractice, employment law and commercial litigation.

Business/corporate law — Increasing business demands are prompting companies to expand into new products and markets. Businesses also are engaging in mergers, acquisitions and joint ventures; issuing securities; and performing other transactions associated with business growth, which results in larger corporate teams. Many companies have a need for additional in-house legal professionals who are readily available to help manage mounting financial and industry-related regulations. Moreover, corporate legal departments often prefer to handle more routine legal work in-house and retain the services of outside counsel for specialized legal work.

Healthcare — The Affordable Care Act has made healthcare insurance coverage available to more people than ever before. As a result, the healthcare industry is expanding, and so is the need for related legal services. Lawyers with healthcare expertise are sought by government agencies, medical providers and law firms that require help in addressing issues related to medical research, Medicare fraud and healthcare implementation.

Real estate — The commercial real estate market has staged a comeback, bringing with it a need for lawyers and paralegals to help with the sale and transfer of commercial properties. These services may entail navigating state and local laws, handling contract negotiations, researching property surveys and titles, resolving zoning issues, and assigning leases.

Intellectual property — Business today is knowledge-based and technology-focused, making the protection of patents and trademarks a thriving practice area. Associates and paralegals with intellectual property expertise are needed by law firms and companies, and often command above-market salaries. For patent preparation and prosecution, employers seek USPTO-licensed attorneys with technical backgrounds, including electrical engineering and computer science, among other areas.

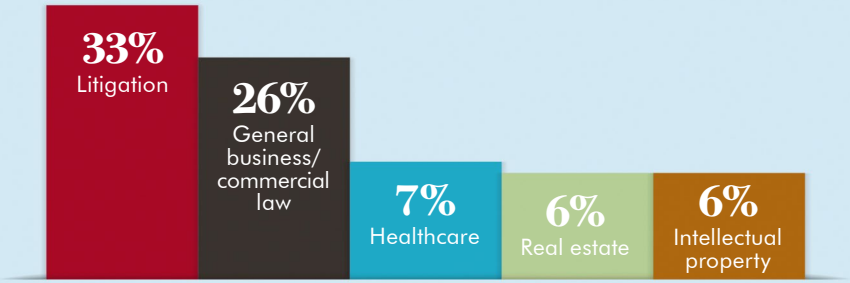
Compliance — As companies attempt to meet the requirements of an expanding number of regulatory mandates, compliance-related legal services are becoming a mainstay. Demand is steady in both corporate and law firm environments for lawyers and legal support professionals who can help businesses understand and comply with often-changing regulations.

Contract administration — Demand is growing in corporate legal departments for contract administrators. These professionals initiate and manage contracts with customers, vendors, partners and employees. They also review, negotiate and draft agreements, including procurement and service contracts and leases. In addition, their duties may include ensuring that systems and software produce accurate data to fulfill contractual obligations.

Legal professionals with experience in these practice areas are likely to find more employment opportunities and greater-than-average salary increases. The supply-demand balance in a particular market, as well as individual experience level, also can influence hiring and compensation levels.

Contact the Robert Half Legal office nearest you by visiting **roberthalflegal.com** or calling **1.855.407.3096** to obtain insights into specific trends in your market.

Practice areas that are expected to generate the greatest number of legal jobs in the next two years:*



**Only the top responses are shown.*
Source: Robert Half Legal survey of 200 lawyers among the largest law firms and corporations in the United States

Salaries for Legal Professionals – United States

Lawyer	2015	2016	% change
Lawyer *(10+ years' exp.)*			
Large law firm	$ 185,250 - $ 270,250	$ 194,250 - $ 279,500	4.0%
Midsize law firm	$ 153,250 - $ 258,750	$ 162,750 - $ 268,500	4.7%
Small/midsize law firm	$ 134,000 - $ 184,500	$ 139,500 - $ 193,750	4.6%
Small law firm	$ 101,000 - $ 166,250	$ 108,250 - $ 169,750	4.0%
Lawyer *(4-9 years' exp.)*			
Large law firm	$ 157,000 - $ 219,000	$ 162,250 - $ 228,750	4.0%
Midsize law firm	$ 130,750 - $ 195,500	$ 135,000 - $ 205,500	4.4%
Small/midsize law firm	$ 94,000 - $ 172,000	$ 102,750 - $ 175,750	4.7%
Small law firm	$ 74,250 - $ 136,250	$ 81,000 - $ 138,500	4.3%
Lawyer *(1-3 years' exp.)*			
Large law firm	$ 119,000 - $ 156,500	$ 120,750 - $ 162,250	2.7%
Midsize law firm	$ 89,250 - $ 126,500	$ 94,000 - $ 128,750	3.2%
Small/midsize law firm	$ 68,500 - $ 107,000	$ 71,500 - $ 109,000	2.8%
Small law firm	$ 58,500 - $ 92,750	$ 61,750 - $ 93,500	2.6%
First-Year Associate			
Large law firm	$ 113,750 - $ 139,000	$ 116,000 - $ 143,500	2.7%
Midsize law firm	$ 79,750 - $ 109,500	$ 81,250 - $ 112,750	2.5%
Small/midsize law firm	$ 62,500 - $ 88,250	$ 63,750 - $ 90,250	2.2%
Small law firm	$ 54,250 - $ 77,500	$ 55,250 - $ 79,500	2.3%

Legal Management	2015	2016	% change
Administrator/Office Manager			
Large law firm	$ 88,500 - $ 148,250	$ 91,500 - $ 151,000	2.4%
Midsize law firm	$ 74,250 - $ 108,750	$ 77,250 - $ 110,250	2.5%
Small/midsize law firm	$ 63,000 - $ 89,500	$ 64,750 - $ 92,500	3.1%
Small law firm	$ 50,500 - $ 70,250	$ 52,250 - $ 71,750	2.7%

Paralegal/Legal Assistant	2015	2016	% change
Senior/Supervising Paralegal/Legal Assistant *(7+ years' exp.)*			
Large law firm	$ 66,750 - $ 95,500	$ 70,250 - $ 96,750	2.9%
Midsize law firm	$ 64,500 - $ 81,250	$ 67,500 - $ 83,250	3.4%
Small/midsize law firm	$ 58,250 - $ 71,750	$ 61,750 - $ 73,500	4.0%
Small law firm	$ 49,250 - $ 66,250	$ 51,500 - $ 68,250	3.7%

Law Firm Definitions

Large law firm 75+ lawyers
Midsize law firm 35-75 lawyers
Small/midsize law firm 10-35 lawyers
Small law firm up to 10 lawyers

Paralegal/Legal Assistant *(continued)*	2015	2016	% change
Midlevel Paralegal/Legal Assistant *(4-6 years' exp.)*			
Large law firm	$ 59,500 - $ 72,750	$ 61,750 - $ 74,750	3.2%
Midsize law firm	$ 55,750 - $ 73,000	$ 58,500 - $ 73,750	2.7%
Small/midsize law firm	$ 51,250 - $ 64,250	$ 54,500 - $ 65,000	3.5%
Small law firm	$ 43,500 - $ 58,500	$ 44,750 - $ 60,250	2.9%
Junior Paralegal/Legal Assistant *(2-3 years' exp.)*			
Large law firm	$ 43,750 - $ 57,000	$ 44,250 - $ 59,500	3.0%
Midsize law firm	$ 42,500 - $ 56,750	$ 43,750 - $ 57,500	2.0%
Small/midsize law firm	$ 39,000 - $ 50,250	$ 40,250 - $ 52,250	3.6%
Small law firm	$ 36,250 - $ 43,750	$ 37,750 - $ 44,500	2.8%
Case Clerk/Assistant *(0-2 years' exp.)*			
Large law firm	$ 34,000 - $ 44,250	$ 35,250 - $ 45,000	2.6%
Midsize law firm	$ 33,250 - $ 42,750	$ 33,750 - $ 43,750	2.0%
Small/midsize law firm	$ 31,000 - $ 38,500	$ 31,500 - $ 40,000	2.9%
Small law firm	$ 29,500 - $ 34,250	$ 29,750 - $ 35,250	2.0%

Legal Secretary	2015	2016	% change
Senior/Executive Legal Secretary *(12+ years' exp.)*			
Large law firm	$ 59,250 - $ 73,000	$ 61,500 - $ 73,500	2.1%
Midsize law firm	$ 57,000 - $ 69,500	$ 58,250 - $ 71,500	2.6%
Small/midsize law firm	$ 50,750 - $ 64,750	$ 52,500 - $ 65,750	2.4%
Small law firm	$ 46,750 - $ 60,000	$ 48,250 - $ 61,250	2.6%
Midlevel Legal Secretary *(7-11 years' exp.)*			
Large law firm	$ 56,000 - $ 67,750	$ 57,250 - $ 69,750	2.6%
Midsize law firm	$ 53,250 - $ 63,750	$ 55,500 - $ 65,000	3.0%
Small/midsize law firm	$ 47,000 - $ 60,250	$ 48,500 - $ 61,500	2.6%
Small law firm	$ 44,500 - $ 56,000	$ 45,000 - $ 57,750	2.2%
Legal Secretary *(3-6 years' exp.)*			
Large law firm	$ 47,750 - $ 61,750	$ 50,250 - $ 62,000	2.5%
Midsize law firm	$ 46,000 - $ 57,500	$ 47,500 - $ 59,500	3.4%
Small/midsize law firm	$ 43,500 - $ 54,000	$ 44,250 - $ 55,250	2.1%
Small law firm	$ 38,750 - $ 48,250	$ 39,500 - $ 49,500	2.3%

Adjusting for Local Markets

In each job category, the salary ranges listed only represent starting compensation because hard-to-measure factors, such as seniority and job performance, can affect ongoing pay. Bonuses, incentives and other benefits are not taken into account.

The figures on these pages are national averages. To adjust them for your local market, please see Page 15. A Robert Half Legal representative can offer additional assistance in creating compensation packages that are customized to your business and practice area.

Legal Secretary *(continued)*	2015	2016	% change
Junior Legal Secretary *(1-2 years' exp.)*			
Large law firm	$ 38,000 - $ 47,750	$ 39,000 - $ 48,500	2.0%
Midsize law firm	$ 37,250 - $ 46,000	$ 37,750 - $ 46,750	1.5%
Small/midsize law firm	$ 34,500 - $ 41,750	$ 35,500 - $ 42,000	1.6%
Small law firm	$ 31,500 - $ 39,500	$ 32,250 - $ 40,250	2.1%

Legal Specialist	2015	2016	% change
Legal Specialist			
Lease Administrator	$ 55,000 - $ 77,500	$ 59,000 - $ 80,500	5.3%
Docket/Calendar Clerk	$ 34,250 - $ 51,750	$ 35,500 - $ 52,250	2.0%
Librarian	$ 46,500 - $ 73,500	$ 47,000 - $ 74,750	1.5%
File/Records Clerk	$ 29,000 - $ 39,250	$ 29,750 - $ 40,000	2.2%
Contract Administration			
Contract Manager	$ 75,000 - $ 116,250	$ 80,500 - $ 121,500	5.6%
Contract Administrator (4+ years' exp.)	$ 68,750 - $ 109,000	$ 71,750 - $ 115,000	5.1%
Contract Administrator (1-3 years' exp.)	$ 52,500 - $ 70,250	$ 53,750 - $ 74,500	4.5%
Compliance Administration			
Compliance Director (10+ years' exp.)	$ 107,000 - $ 135,750	$ 118,250 - $ 138,500	5.8%
Compliance Manager (7-9 years' exp.)	$ 91,750 - $ 110,000	$ 94,500 - $ 116,750	4.7%
Compliance Analyst (4-6 years' exp.)	$ 67,000 - $ 84,500	$ 69,750 - $ 88,250	4.3%
Compliance Analyst (1-3 years' exp.)	$ 52,500 - $ 71,250	$ 52,750 - $ 75,750	3.8%

Law Firm Definitions

Large law firm 75+ lawyers
Midsize law firm 35-75 lawyers
Small/midsize law firm 10-35 lawyers
Small law firm up to 10 lawyers

Company Definitions

Large company $250+ million in revenue
Midsize company $25 million-$250 million in revenue
Small company up to $25 million in revenue

Legal Specialist *(continued)*	2015	2016	% change
Litigation Support/eDiscovery			
Litigation Support/eDiscovery Director (10+ years' exp.)	$ 97,250 - $ 121,750	$ 101,000 - $ 130,500	5.7%
Litigation Support/eDiscovery Manager (7-9 years' exp.)	$ 81,250 - $ 108,000	$ 84,000 - $ 115,750	5.5%
Litigation Support/eDiscovery Manager (3-6 years' exp.)	$ 69,500 - $ 89,750	$ 72,750 - $ 93,500	4.4%
Litigation Support/eDiscovery Specialist/Analyst (1-2 years' exp.)	$ 53,250 - $ 64,000	$ 54,750 - $ 68,000	4.7%
Document Coder	$ 29,000 - $ 39,500	$ 30,250 - $ 40,750	3.6%

In-House Counsel	2015	2016	% change
In-House Counsel *(10+ years' exp.)*			
Large company	$ 179,000 - $ 251,500	$ 185,250 - $ 259,750	3.4%
Midsize company	$ 143,500 - $ 225,000	$ 149,000 - $ 231,250	3.2%
Small company	$ 126,250 - $ 181,000	$ 130,750 - $ 187,500	3.6%
In-House Counsel *(4-9 years' exp.)*			
Large company	$ 152,500 - $ 212,250	$ 160,500 - $ 217,750	3.7%
Midsize company	$ 132,250 - $ 187,250	$ 137,000 - $ 192,500	3.1%
Small company	$ 109,750 - $ 153,500	$ 111,500 - $ 159,750	3.0%
In-House Counsel *(0-3 years' exp.)*			
Large company	$ 121,500 - $ 156,500	$ 125,750 - $ 160,250	2.9%
Midsize company	$ 97,750 - $ 132,000	$ 99,500 - $ 136,500	2.7%
Small company	$ 81,500 - $ 109,250	$ 82,250 - $ 112,750	2.2%

In-House Paralegal/ Legal Assistant	2015	2016	% change
Senior/Supervising Paralegal/Legal Assistant *(7+ years' exp.)*			
Large company	$ 71,250 - $ 96,250	$ 74,500 - $ 98,000	3.0%
Midsize company	$ 64,750 - $ 86,000	$ 67,250 - $ 88,250	3.2%
Small company	$ 60,500 - $ 75,250	$ 62,750 - $ 77,500	3.3%

Adjusting for Local Markets

In each job category, the salary ranges listed only represent starting compensation because hard-to-measure factors, such as seniority and job performance, can affect ongoing pay. Bonuses, incentives and other benefits are not taken into account.

The figures on these pages are national averages. To adjust them for your local market, please see Page 15. A Robert Half Legal representative can offer additional assistance in creating compensation packages that are customized to your business and practice area.

In-House Paralegal/ Legal Assistant *(continued)*	2015	2016	% change
Midlevel Paralegal/Legal Assistant *(4-6 years' exp.)*			
Large company	$ 58,250 - $ 74,750	$ 60,000 - $ 77,500	3.4%
Midsize company	$ 54,500 - $ 66,000	$ 55,750 - $ 68,250	2.9%
Small company	$ 50,750 - $ 60,500	$ 52,000 - $ 62,250	2.7%
Junior Paralegal/Legal Assistant *(2-3 years' exp.)*			
Large company	$ 49,250 - $ 59,000	$ 50,000 - $ 61,250	2.8%
Midsize company	$ 45,500 - $ 55,250	$ 46,500 - $ 57,000	2.7%
Small company	$ 41,250 - $ 51,000	$ 41,750 - $ 52,500	2.2%
Case Clerk/Assistant *(0-2 years' exp.)*			
Large company	$ 38,500 - $ 47,250	$ 40,000 - $ 48,000	2.6%
Midsize company	$ 36,000 - $ 44,000	$ 36,250 - $ 45,750	2.5%
Small company	$ 33,750 - $ 40,500	$ 34,250 - $ 41,500	2.0%

In-House Legal Secretary	2015	2016	% change
Senior/Executive Legal Secretary *(7+ years' exp.)*			
Large company	$ 61,250 - $ 77,750	$ 63,500 - $ 79,000	2.5%
Midsize company	$ 57,500 - $ 70,000	$ 59,000 - $ 71,750	2.5%
Small company	$ 52,750 - $ 64,750	$ 53,750 - $ 66,250	2.1%
Legal Secretary *(3-6 years' exp.)*			
Large company	$ 50,500 - $ 65,250	$ 51,750 - $ 67,250	2.8%
Midsize company	$ 46,750 - $ 59,250	$ 48,000 - $ 61,500	3.3%
Small company	$ 43,250 - $ 54,500	$ 44,250 - $ 55,500	2.0%
Junior Legal Secretary *(1-2 years' exp.)*			
Large company	$ 43,000 - $ 52,750	$ 44,250 - $ 53,750	2.3%
Midsize company	$ 40,000 - $ 49,500	$ 41,250 - $ 50,500	2.5%
Small company	$ 36,250 - $ 46,000	$ 37,000 - $ 47,250	2.4%

General Administrative	2015	2016	% change
General Administrative			
Legal Word Processor	$ 42,750 - $ 57,250	$ 43,500 - $ 58,500	2.0%
Office Clerk	$ 28,000 - $ 39,000	$ 28,750 - $ 40,000	2.6%
Legal Receptionist	$ 29,250 - $ 39,250	$ 29,750 - $ 40,250	2.2%

Company Definitions

Large company $250+ million in revenue
Midsize company $25 million-$250 million in revenue
Small company up to $25 million in revenue

Adjusting Salaries for U.S. Cities

The salary ranges provided on the previous pages reflect the national averages. Approximate salary ranges for your market can be calculated using the formula below and local variance numbers for specific cities (see Pages 16-18).* Our list of local variances features data for more than 135 U.S. cities. The average salary index for all U.S. cities is 100.

CALCULATING THE LOCAL SALARY RANGE

Example — First-year associate at a small law firm in Boston

1. Locate the position ("first-year associate, small law firm") on the chart (Page 10) and the city's variance number. (The variance number for Boston is 133.0.)
2. Move the decimal point of the variance number two places to the left to create a percentage (1.330).
3. Multiply the low end of the national salary range ($55,250) by the percentage calculated in step two (1.330) to get $73,483.
4. Repeat step three using the high end of the salary range ($79,500) to get $105,735.
5. The approximate starting salary range for a first-year associate at a small law firm in Boston is $73,483 to $105,735.

The variance numbers should be used as a guide in determining actual compensation. Other factors, including employee benefits, the candidate's skill set and current market conditions, can affect starting salaries. Please contact a Robert Half Legal representative for help redefining salary packages to match local conditions.

**Source: U.S. Department of Labor's Bureau of Labor Statistics and Robert Half Legal. Note that local variance numbers reflect all industries and are not specific to the legal market. Industry-specific issues, such as in-demand practice area expertise, also may affect salaries in your area. For more information on average starting salaries in your city, contact the Robert Half Legal office nearest you.*

Visit our Salary Center at **roberthalflegal.com/salary-center** for more information and resources.

Local Variances – United States

ALABAMA

Birmingham 95.0
Huntsville..... 93.0
Mobile 86.0

ARIZONA

Phoenix 112.0
Tucson 103.5

ARKANSAS

Fayetteville..... 95.0
Little Rock..... 95.0

CALIFORNIA

Fresno..... 90.0
Irvine.....128.0
Los Angeles 128.0
Oakland..... 127.0
Ontario 117.0
Sacramento 102.0
San Diego 123.0
San Francisco 138.0
San Jose.....135.0
Santa Barbara 127.0
Santa Rosa 118.1
Stockton 85.0

COLORADO

Boulder 116.3
Colorado Springs..... 92.3
Denver 104.8
Fort Collins..... 95.0
Greeley 86.0
Loveland..... 92.0
Pueblo..... 80.0

CONNECTICUT

Hartford 116.5
New Haven 112.0
Stamford 131.0

DELAWARE

Wilmington 105.0

DISTRICT OF COLUMBIA

Washington 133.0

FLORIDA

Fort Myers 90.0
Jacksonville 95.0
Melbourne..... 90.5
Miami/Fort Lauderdale..... 107.0
Orlando 99.5
St. Petersburg..... 96.5
Tampa..... 98.0
West Palm Beach 100.5

GEORGIA

Atlanta 106.5
Macon 84.0
Savannah 84.0

HAWAII

Honolulu 105.0

IDAHO

Boise..... 86.1

ILLINOIS

Chicago 123.0
Naperville 112.0
Rockford..... 83.0
Springfield 91.0

INDIANA

Fort Wayne 82.0
Indianapolis 96.0

IOWA

Cedar Rapids 94.0
Davenport 95.0
Des Moines 100.0
Sioux City 83.0
Waterloo/Cedar Falls 87.0

KANSAS

Overland Park 99.2

KENTUCKY

Lexington 91.5
Louisville 92.0

LOUISIANA

Baton Rouge 99.0
New Orleans 99.0

MAINE

Portland 95.0

MARYLAND

Baltimore 103.0

MASSACHUSETTS

Boston 133.0
Springfield 104.0

MICHIGAN

Ann Arbor 101.5
Detroit 100.0
Grand Rapids 85.5
Lansing 85.0

MINNESOTA

Bloomington 105.5
Duluth 79.6
Minneapolis 106.0
Rochester 100.5
St. Cloud 82.0
St. Paul 102.0

MISSOURI

Kansas City 99.2
St. Joseph 91.0
St. Louis 100.0

NEBRASKA

Lincoln 86.0
Omaha 96.0

NEVADA

Las Vegas 97.0
Reno 98.0

NEW HAMPSHIRE

Manchester/Nashua 112.0

NEW JERSEY

Mount Laurel 115.0
Paramus 130.0
Princeton 125.0
Woodbridge 126.5

NEW MEXICO

Albuquerque 91.5

NEW YORK

Albany 97.0
Buffalo 95.0
Long Island 120.0
New York 140.0

NEW YORK *(continued)*

Rochester 91.7
Syracuse 90.3

NORTH CAROLINA

Charlotte 101.5
Greensboro 100.0
Raleigh 104.0

OHIO

Akron 89.0
Canton 82.0
Cincinnati 97.5
Cleveland 96.0
Columbus 97.5
Dayton 87.0
Toledo 84.5
Youngstown 76.0

OKLAHOMA

Oklahoma City 93.0
Tulsa 93.0

OREGON

Portland 106.5

PENNSYLVANIA

Harrisburg 95.0
Philadelphia 115.0
Pittsburgh 98.0

RHODE ISLAND

Providence 97.0

SOUTH CAROLINA

Charleston 93.5
Columbia 93.5
Greenville 92.0

TENNESSEE

Chattanooga 89.0
Cool Springs 99.0
Knoxville 89.0
Memphis 95.0
Nashville 99.5

TEXAS

Austin 107.0
Dallas 108.5
El Paso 72.0
Fort Worth 107.5
Houston 107.5
Midland/Odessa 115.0
San Antonio 100.0

UTAH

Salt Lake City 101.0

VIRGINIA

Norfolk/Hampton Roads 96.0
Richmond 98.0
Tysons Corner 132.0

WASHINGTON

Seattle 118.9
Spokane 82.0

WISCONSIN

Appleton 85.0
Green Bay 86.5
Madison 98.5
Milwaukee 101.0
Waukesha 99.0

Hiring and Management Trends – Canada

Steady improvement in the legal employment market is expected across the nation. Law firms are strategically supplementing their teams, especially in high-demand practice areas such as real estate, corporate law and litigation. In particular, small and midsize firms are doing much of the hiring.

Corporate legal departments are responding to increasing business demands and adding staff at every level to address legal work related to compliance requirements, contract administration and industry-specific issues. Sectors where legal hiring has increased include financial services, technology, energy, insurance, and professional services. Many of those hiring are multinational corporations.

Some provinces and cities are experiencing stronger hiring activity and more economic stability than others. In Toronto, for instance, corporate legal departments in the financial services, energy and real estate sectors, as well as small to midsize law firms specializing in insurance defense and personal injury, are expanding their teams to manage rising caseloads.

65%

of lawyers said it is challenging for their law firms or companies to find skilled legal professionals today.

Source: Robert Half Legal survey of 150 lawyers among the largest law firms and corporations in Canada

Compensation is improving for legal professionals as employers place a premium on candidates with in-demand industry or practice area expertise. Job seekers with fluency in both English and French have a hiring advantage at law firms and with government agencies.

To attract top talent, employers are emphasizing career growth opportunities, training programs, job stability, and corporate culture. Perks sought by legal job applicants include additional vacation time, flexible work options, and dental and health-related benefits that exceed what the government offers.

SKILLS AND EXPERTISE IN DEMAND

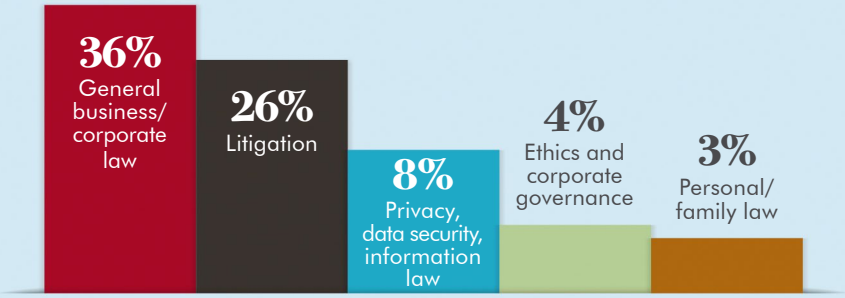
Lawyers

Law firms are pursuing new business opportunities and fortifying lucrative practice areas by adding mid- and senior-level lawyers with a book of business and solid client management skills. Candidates with corporate law and litigation backgrounds, especially with personal injury and insurance defense expertise, are highly marketable. Lawyers also are expected to be increasingly tech-savvy, capable of using different platforms and performing document reviews and other legal tasks.

Law Clerks and Legal Support Professionals

Law clerks who are versatile and tech-savvy and who can perform a range of legal duties are in demand at both law firms and companies. Some law firms also are looking for candidates who have supervisory experience to oversee the work of team members. Entry-level law clerk hiring is on the upswing, along with on-campus recruiting. Specialization in high-demand practice areas is a key factor in hiring for legal support roles. For example, professional certification from organizations such as the Institute of Law Clerks of Ontario is becoming a valued credential for law clerks in that province, and one that often brings a higher salary.

Practice areas that are expected to generate the greatest number of legal jobs in the next two years:*



**Only the top responses are shown.*
Source: Robert Half Legal survey of 150 lawyers among the largest law firms and corporations in Canada

Salaries for Legal Professionals – Canada

Lawyer	2015	2016	% change
Senior Lawyer *(10+ years' exp.)*			
Large law firm	$ 198,750 - $ 291,250	$ 206,750 - $ 298,750	3.2%
Midsize law firm	$ 159,000 - $ 222,750	$ 165,250 - $ 233,500	4.5%
Small/midsize law firm	$ 136,750 - $ 192,500	$ 139,750 - $ 203,250	4.2%
Small law firm	$ 110,000 - $ 161,250	$ 115,250 - $ 166,500	3.9%
Lawyer *(4-9 years' exp.)*			
Large law firm	$ 140,250 - $ 247,250	$ 143,000 - $ 259,250	3.8%
Midsize law firm	$ 119,250 - $ 210,750	$ 124,750 - $ 218,500	4.0%
Small/midsize law firm	$ 93,250 - $ 165,750	$ 97,500 - $ 170,500	3.5%
Small law firm	$ 76,500 - $ 134,500	$ 80,250 - $ 137,000	3.0%
Lawyer *(1-3 years' exp.)*			
Large law firm	$ 94,000 - $ 127,250	$ 97,750 - $ 130,250	3.1%
Midsize law firm	$ 74,250 - $ 117,500	$ 77,500 - $ 121,000	3.5%
Small/midsize law firm	$ 73,000 - $ 106,000	$ 75,000 - $ 109,250	2.9%
Small law firm	$ 56,750 - $ 86,250	$ 58,250 - $ 88,750	2.8%
First-Year Associate			
Large law firm	$ 85,750 - $ 95,750	$ 87,250 - $ 99,750	3.0%
Midsize law firm	$ 66,750 - $ 83,500	$ 68,250 - $ 85,250	2.2%
Small/midsize law firm	$ 66,250 - $ 73,000	$ 67,750 - $ 74,500	2.2%
Small law firm	$ 50,500 - $ 68,250	$ 51,500 - $ 69,750	2.1%

Legal Management	2015	2016	% change
Administrator/Office Manager			
Large law firm	$ 72,000 - $ 106,250	$ 74,500 - $ 108,750	2.8%
Midsize law firm	$ 64,000 - $ 84,000	$ 65,000 - $ 86,500	2.4%
Small/midsize law firm	$ 58,250 - $ 75,250	$ 59,250 - $ 76,750	1.9%
Small law firm	$ 47,500 - $ 65,250	$ 49,000 - $ 66,000	2.0%

Law Clerk/Paralegal	2015	2016	% change
Senior/Supervising Law Clerk *(7+ years' exp.)*			
Large law firm	$ 64,750 - $ 96,500	$ 67,500 - $ 97,750	2.5%
Midsize law firm	$ 61,000 - $ 83,500	$ 63,250 - $ 84,750	2.4%
Small/midsize law firm	$ 54,250 - $ 73,250	$ 56,500 - $ 74,000	2.4%
Small law firm	$ 46,750 - $ 64,750	$ 48,000 - $ 65,750	2.0%

Note: All salaries listed on Pages 21-25 are in Canadian dollars.

Law Firm Definitions

Large law firm 75+ lawyers
Midsize law firm 35-75 lawyers
Small/midsize law firm 10-35 lawyers
Small law firm up to 10 lawyers

Law Clerk/Paralegal *(continued)*	2015	2016	% change
Midlevel Law Clerk *(4-6 years' exp.)*			
Large law firm	$ 53,500 - $ 71,250	$ 55,250 - $ 73,500	3.2%
Midsize law firm	$ 53,000 - $ 67,250	$ 54,750 - $ 69,250	3.1%
Small/midsize law firm	$ 48,500 - $ 61,750	$ 50,000 - $ 64,000	3.4%
Small law firm	$ 46,500 - $ 53,750	$ 48,250 - $ 54,750	2.7%
Junior Law Clerk *(2-3 years' exp.)*			
Large law firm	$ 43,750 - $ 50,250	$ 44,500 - $ 51,500	2.1%
Midsize law firm	$ 42,500 - $ 49,000	$ 42,750 - $ 50,000	1.4%
Small/midsize law firm	$ 38,000 - $ 47,750	$ 39,000 - $ 48,750	2.3%
Small law firm	$ 35,750 - $ 42,250	$ 36,250 - $ 43,000	1.6%

Legal Assistant	2015	2016	% change
Senior/Executive Legal Assistant *(12+ years' exp.)*			
Large law firm	$ 57,000 - $ 76,250	$ 58,500 - $ 77,500	2.1%
Midsize law firm	$ 53,500 - $ 63,000	$ 54,750 - $ 63,750	1.7%
Small/midsize law firm	$ 50,750 - $ 61,250	$ 52,250 - $ 62,500	2.5%
Small law firm	$ 47,500 - $ 56,750	$ 48,750 - $ 57,750	2.2%
Midlevel Legal Assistant *(7-11 years' exp.)*			
Large law firm	$ 52,500 - $ 64,500	$ 53,750 - $ 66,250	2.6%
Midsize law firm	$ 49,750 - $ 59,000	$ 50,750 - $ 60,500	2.3%
Small/midsize law firm	$ 48,250 - $ 55,500	$ 49,250 - $ 56,750	2.2%
Small law firm	$ 42,500 - $ 51,250	$ 43,250 - $ 52,500	2.1%
Legal Assistant *(3-6 years' exp.)*			
Large law firm	$ 45,750 - $ 53,500	$ 46,750 - $ 54,500	2.0%
Midsize law firm	$ 43,250 - $ 51,500	$ 44,750 - $ 52,250	2.4%
Small/midsize law firm	$ 40,250 - $ 51,000	$ 42,000 - $ 51,750	2.7%
Small law firm	$ 38,750 - $ 47,000	$ 39,250 - $ 48,750	2.6%
Junior Legal Assistant *(1-2 years' exp.)*			
Large law firm	$ 36,750 - $ 40,750	$ 37,250 - $ 41,500	1.6%
Midsize law firm	$ 34,750 - $ 39,500	$ 35,250 - $ 40,000	1.3%
Small/midsize law firm	$ 33,500 - $ 38,750	$ 34,000 - $ 39,250	1.4%
Small law firm	$ 30,250 - $ 36,500	$ 30,500 - $ 37,000	1.1%

Adjusting for Local Markets

In each job category, the salary ranges listed only represent starting compensation because hard-to-measure factors, such as seniority and job performance, can affect ongoing pay. Bonuses, incentives and other benefits are not taken into account.

The figures on these pages are national averages. To adjust them for your local market, please see Page 26. A Robert Half Legal representative can offer additional assistance in creating compensation packages that are customized to your business and practice area.

In-House Counsel	2015	2016	% change
In-House Counsel *(10+ years' exp.)*			
Large company	$ 170,750 - $ 280,250	$ 177,500 - $ 286,750	2.9%
Midsize company	$ 137,000 - $ 207,750	$ 143,250 - $ 212,500	3.2%
Small company	$ 131,250 - $ 180,250	$ 132,000 - $ 189,250	3.1%
In-House Counsel *(4-9 years' exp.)*			
Large company	$ 144,500 - $ 238,500	$ 149,500 - $ 246,000	3.3%
Midsize company	$ 118,750 - $ 196,000	$ 122,250 - $ 201,500	2.9%
Small company	$ 105,250 - $ 186,000	$ 109,750 - $ 187,250	2.0%
In-House Counsel *(0-3 years' exp.)*			
Large company	$ 101,250 - $ 150,000	$ 103,500 - $ 155,250	3.0%
Midsize company	$ 86,250 - $ 133,500	$ 88,250 - $ 137,500	2.7%
Small company	$ 76,500 - $ 122,750	$ 79,000 - $ 125,750	2.8%

In-House Law Clerk	2015	2016	% change
Senior/Supervising Law Clerk *(7+ years' exp.)*			
Large company	$ 84,750 - $ 136,500	$ 85,750 - $ 137,250	0.8%
Midsize company	$ 57,000 - $ 78,500	$ 58,000 - $ 80,250	2.0%
Small company	$ 52,000 - $ 67,500	$ 53,750 - $ 67,750	1.7%
Midlevel Law Clerk *(4-6 years' exp.)*			
Large company	$ 56,750 - $ 69,750	$ 58,500 - $ 71,500	2.8%
Midsize company	$ 53,750 - $ 65,500	$ 55,250 - $ 67,750	3.1%
Small company	$ 51,000 - $ 61,500	$ 52,750 - $ 63,000	2.9%
Junior Law Clerk *(2-3 years' exp.)*			
Large company	$ 46,250 - $ 50,750	$ 47,000 - $ 51,750	1.8%
Midsize company	$ 43,250 - $ 47,750	$ 43,750 - $ 48,250	1.1%
Small company	$ 38,500 - $ 45,250	$ 39,250 - $ 45,500	1.2%

Law Firm Definitions

Large law firm 75+ lawyers
Midsize law firm 35-75 lawyers
Small/midsize law firm 10-35 lawyers
Small law firm up to 10 lawyers

Company Definitions

Large company $250+ million in revenue
Midsize company $25 million-$250 million in revenue
Small company up to $25 million in revenue

In-House Legal Assistant	2015	2016	% change
Senior/Executive Legal Assistant *(7+ years' exp.)*			
Large company	$ 55,500 - $ 68,750	$ 56,250 - $ 70,250	1.8%
Midsize company	$ 53,500 - $ 65,000	$ 54,000 - $ 66,500	1.7%
Small company	$ 50,250 - $ 60,750	$ 50,750 - $ 61,750	1.4%
Legal Assistant *(3-6 years' exp.)*			
Large company	$ 45,250 - $ 58,500	$ 46,000 - $ 59,750	1.9%
Midsize company	$ 42,250 - $ 56,500	$ 42,750 - $ 57,000	1.0%
Small company	$ 39,250 - $ 52,250	$ 39,500 - $ 53,500	1.6%
Junior Legal Assistant *(1-2 years' exp.)*			
Large company	$ 37,750 - $ 44,250	$ 38,250 - $ 45,000	1.5%
Midsize company	$ 35,000 - $ 40,500	$ 35,500 - $ 40,750	1.0%
Small company	$ 33,000 - $ 38,250	$ 33,750 - $ 38,500	1.4%

Legal Specialist/ Administrative	2015	2016	% change
Legal Specialist/Administrative			
Lease Administrator	$ 52,500 - $ 73,250	$ 55,000 - $ 77,250	5.2%
Legal Word Processor	$ 37,250 - $ 46,500	$ 38,000 - $ 47,250	1.8%
Office Clerk	$ 28,000 - $ 38,000	$ 28,500 - $ 38,500	1.5%
File/Records Clerk	$ 28,250 - $ 39,250	$ 28,750 - $ 39,750	1.5%
Legal Receptionist	$ 30,000 - $ 41,250	$ 30,500 - $ 42,000	1.8%
Compliance Administration			
Compliance Director (10+ years' exp.)	$ 167,000 - $ 225,750	$ 176,000 - $ 238,000	5.4%
Compliance Manager (7-9 years' exp.)	$ 146,250 - $ 192,000	$ 153,750 - $ 201,750	5.1%
Compliance Analyst (4-6 years' exp.)	$ 74,250 - $ 104,000	$ 78,000 - $ 109,250	5.0%
Compliance Analyst (1-3 years' exp.)	$ 58,250 - $ 72,000	$ 61,000 - $ 75,500	4.8%

Adjusting for Local Markets

In each job category, the salary ranges listed only represent starting compensation because hard-to-measure factors, such as seniority and job performance, can affect ongoing pay. Bonuses, incentives and other benefits are not taken into account.

The figures on these pages are national averages. To adjust them for your local market, please see Page 26. A Robert Half Legal representative can offer additional assistance in creating compensation packages that are customized to your business and practice area.

Legal Specialist/ Administrative *(continued)*	2015	2016	% change
Contract Administration			
Contract Manager	$ 65,750 - $ 96,000	$ 69,000 - $ 101,750	5.6%
Contract Administrator (4+ years' exp.)	$ 51,000 - $ 81,500	$ 52,500 - $ 86,500	4.9%
Contract Administrator (1-3 years' exp.)	$ 45,750 - $ 61,750	$ 47,000 - $ 64,750	4.0%
Litigation Support/eDiscovery			
Litigation Support/eDiscovery Director (10+ years' exp.)	$ 92,000 - $ 123,750	$ 98,500 - $ 129,750	5.8%
Litigation Support/eDiscovery Manager (7-9 years' exp.)	$ 78,500 - $ 107,500	$ 82,500 - $ 111,250	4.2%
Litigation Support/eDiscovery Manager (3-6 years' exp.)	$ 69,500 - $ 88,000	$ 71,750 - $ 92,250	4.1%
Litigation Support/eDiscovery Analyst (1-2 years' exp.)	$ 52,500 - $ 62,000	$ 54,000 - $ 65,000	3.9%
Document Coder	$ 28,500 - $ 38,000	$ 29,000 - $ 39,250	2.6%

Company Definitions

Large company $250+ million in revenue
Midsize company $25 million-$250 million in revenue
Small company up to $25 million in revenue

Adjusting Salaries for Canadian Cities

The salary ranges provided on the previous pages reflect the national averages. Approximate salary ranges for your market can be calculated using the formula below and local variance numbers for specific cities on Page 27.* The average salary index for all Canadian cities is 100.

CALCULATING THE LOCAL SALARY RANGE

Example — First-year associate at a small law firm in Toronto

1. Locate the position ("first-year associate, small law firm") on the chart (Page 21) and the local variance number. (The variance number for Toronto is 104.9.)
2. Move the decimal point of the variance number two places to the left to create a percentage (1.049).
3. Multiply the low end of the national salary range ($51,500) by the percentage calculated in step two (1.049) to get $54,024.
4. Repeat step three using the high end of the salary range ($69,750) to get $73,168.
5. The approximate starting salary range for a first-year associate at a small law firm in Toronto is $54,024 to $73,168.

The variance numbers should be used as a guide in determining actual compensation. Other factors, including employer benefits, the candidate's skill set and current market conditions, can affect starting salaries. Please contact a Robert Half Legal representative for help redefining salary packages to match local conditions.

Visit our Salary Centre at **roberthalflegal.com/salary-centre** for more information and resources.

Local Variances – Canada

ALBERTA

Calgary.....104.8
Edmonton.....102.9

BRITISH COLUMBIA

Fraser Valley 98.4
Vancouver 103.9
Victoria 96.2

MANITOBA

Winnipeg..... 90.5

ONTARIO

Kitchener-Waterloo 95.8
Ottawa 100.2
Toronto 104.9

QUEBEC

Montreal 102.9
Quebec City..... 90.0

SASKATCHEWAN

Regina..... 93.9
Saskatoon 95.3

**Note that local variance numbers reflect all industries and are not specific to the legal market. Industry-specific issues, such as in-demand practice area expertise, also may affect salaries in your area. For more information on average starting salaries in your city, contact the Robert Half Legal office nearest you.*

Hiring for Your Work Environment

A job isn't just a job.

That might sound strange, but successfully staffing any legal position requires more than simply finding someone who can do the job. Besides technical skills, the ideal candidate will also have the interpersonal qualities to fit well within a larger mosaic: your law firm or company culture.

But how can you know someone is a good job match from an interview alone? Well, you can't. At least, not entirely. Here are some steps you can take to find the ideal candidate:

- DEMONSTRATE WHAT MAKES YOU DIFFERENT.

  Highlight the unique attributes of your organization's corporate culture on your website and in job postings. Also make sure your hiring managers can easily articulate why your business is a great place to work. Help them capture in words, example and imagery the essence of your firm's atmosphere and people.

- INTRODUCE THE TEAM.

  When you invite candidates in for interviews, give them an opportunity to talk to other employees. This can offer them additional perspectives on what it's really like to work for your law firm or company. Later, you can ask your team how well they feel the person would do in the job.

- ASK THE RIGHT INTERVIEW QUESTIONS. HERE ARE SOME SUGGESTIONS:

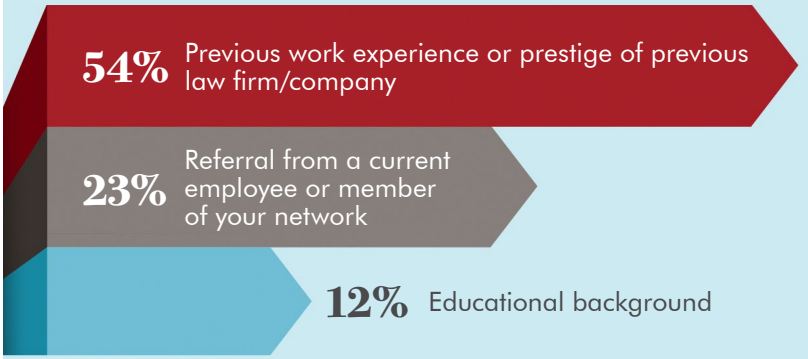
  – **What makes you want to come to work every day?** Does workplace competition motivate or discourage them? Do they enjoy building relationships with clients, or do they prefer behind-the-scenes problem-solving? Again, look for candidates whose passion matches your organization's values.

  – **Why do you want to work here?** Your best prospects will go beyond the obvious and touch on aspects of your office culture. Do you get a sense your corporate work environment would stimulate them?

– **Can you describe your work style?** Some professionals will say they're most productive when they work independently; others work better when they're part of a team. Some prefer brainstorming sessions over well-organized meetings. The point is, do you think the person can find satisfaction working for you?

The most important aspect of company culture is authenticity. If you mimic the hallmarks of other firms instead of reflecting your own, it's going to be tough to hire people who will work in sync with your legal team.

Lawyers were asked, **"Which one of the following is the best indicator of a job candidate's potential for success in your organization?"** Their responses:*



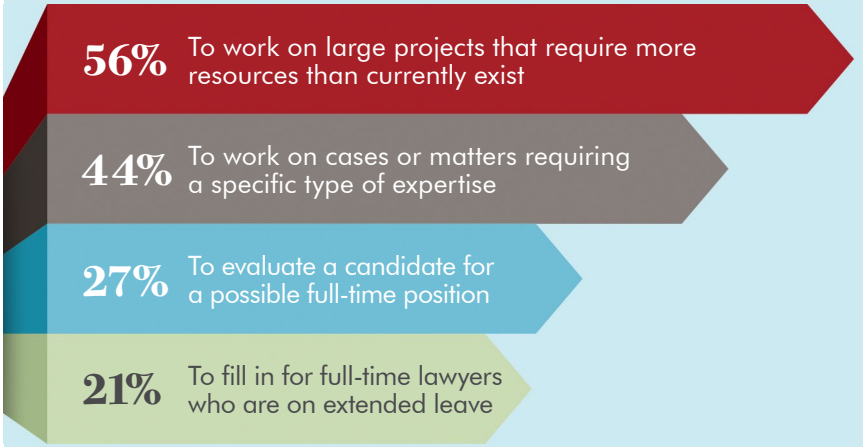
**Only the top responses are shown.*
Source: Robert Half Legal survey of 350 lawyers among the largest law firms and corporations in the United States and Canada

Why Today's Businesses Need a Flexible Staffing Strategy

Law firms and companies are relying on interim legal professionals as part of their staffing mix to a greater extent than ever before. There are several reasons for this trend, but ultimately, it just makes sense: Why hire full-time employees for tasks that don't require full-time attention?

Rigid staffing structures are expensive and inefficient. They don't allow organizations to respond quickly and strategically to fluctuating business needs. In order for law firms and companies to have the right people in the right places at the right time, they need flexibility.

Lawyers were asked, **"For which of the following circumstances might your law firm or company use lawyers on a project, contract or temporary basis?"** Their responses:*



**Only the top responses are shown.*
Source: Robert Half Legal survey of 350 lawyers among the largest law firms and corporations in the United States and Canada

Your full-time people will always be the backbone of your legal workforce. But augmenting this core group with temporary professionals gives you more control over labor costs — and helps keep morale high. You can rapidly staff up or down in response to customer demand while lightening the load for employees who are stretched too thin.

Today's project professionals possess a range of in-demand skills. That gives you the flexibility to address staffing gaps across your organization or access senior-level expertise for critical caseloads or initiatives of limited duration.

Other reasons flexible staffing should be at the heart of your year-round personnel strategy include:

- Relief for overburdened employees at risk of burnout — or leaving your firm altogether
- Minimized overtime expenses
- Reduced recruiting and hiring costs
- Support for core employees temporarily dedicated to special initiatives but whose regular jobs can't go unattended
- Greater job stability for full-time workers who'll be largely protected from cycles of hiring and layoffs as business needs fluctuate

And when you do need to hire full time, you might already have a potential candidate in place. Because you know the person's strengths firsthand, you can save time and money while maintaining optimum productivity since you don't have to embark on a long recruiting process.

More talented professionals are working on a project basis or as a consultant because of the opportunity to gain experience in different industries and expand their skill set. Taking full advantage of this trend can give your law firm or company the flexibility it needs to succeed in today's business environment.

Your Staffing Expert

Robert Half is the world's leading specialized staffing service. Our Robert Half Legal division specializes in placing legal professionals on a temporary, full-time and project basis. The company also offers a full suite of legal staffing and consulting solutions. Here are just a few of the benefits you enjoy when you let Robert Half Legal assist with your staffing needs:

IMMEDIATE ATTENTION

Time is money when you're seeking reinforcements for your team. Our staffing specialists, who commonly possess experience in the legal field, are trained to help find professionals who can start right away. We have access to active and passive job seekers so you can receive the talent best suited to your needs and company culture.

DEEP NETWORKS

By tapping into our extensive internal networks, our staffing professionals collaborate with colleagues near and far to find the best available matches. We also have access to legal candidates other staffing firms don't because of our alliances with major professional associations, including the Association of Corporate Counsel and the Association of Legal Administrators. These are all reasons businesses don't have to look beyond Robert Half for staffing assistance.

TURNKEY RESULTS

Companies, especially those with limited resources, don't want to spend time on a lot of details when recruiting. We can handle all aspects of the hiring process for you — from candidate sourcing and interviews to skills evaluations.

PERSONALIZED SOLUTIONS

Anyone can post a job online and get plenty of responses. It's easy and it doesn't cost much. But it takes much more than a computer to find candidates who are suited to your needs. That comes only through working directly with a staffing professional. While we, too, take full advantage of the latest technology tools, it's the personal service we provide our clients that we're known for. No e-solution can replace the one-on-one attention you receive when discussing your hiring needs with a skilled recruiter.

Contact Robert Half Legal at **roberthalflegal.com** or **1.855.407.3096** to learn more about how we can help you find skilled talent for your organization.

Office Locations

UNITED STATES

Arizona
Phoenix

California
Los Angeles
Oakland
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San Francisco
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Colorado
Denver

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Atlanta

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